

Department of Transport

Regulatory Impact Statement of the proposed Port Services (Port of Melbourne Safety and Other Matters) Regulations 2010



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Executive summary

Introduction

The Port of Melbourne (PoM) is Australia's largest port by value, handling over \$75 billion in international and coastal trade each year.¹ The Port of Melbourne Corporation (PoMC) is the statutory authority that owns and operates the PoM. The key legislation covering the PoM is the *Port Services Act 1995* (the Act) (to be renamed the *Port Management Act 1995* upon the commencement of the *Transport Legislation Amendment (Ports Integration) Act 2010*). The Act includes prescribed functions and responsibilities for the PoMC.

In 2001, *The Next Wave of Port Reform in Victoria* identified that, as a consequence of the regulatory reforms in the ports sector since the mid-1990s, a range of environmental and safety risks at the PoM were unregulated. The unregulated risks included the transfer of liquid and dry cargo, hot works and abandoned property. The Act was accordingly amended to provide PoMC with enforcement powers to compel port users to comply with safety, security and environmental management requirements which arise from these activities.

The Department of Transport (DoT) has prepared proposed regulations to support the Act. The proposed regulations aim to provide:

- the PoMC with additional powers to manage bunkering² and the transfer of other non-cargo liquids
- clarity and certainty around the administrative detail for PoMC's new powers resulting from the amendments to the Act.

This Regulatory Impact Statement (RIS) focuses on the impact of the proposed new powers (i.e. regulating bunkering and the transfer of non-cargo liquids) as these powers have the potential to impose an appreciable burden. Providing clarity and certainty is likely to benefit port users, however, during consultation it was found that this benefit was marginal.

In accordance with the requirements of the *Victorian Guide to Regulation*, this RIS assesses if there is a problem with the current management of bunkering and the transfer of other non-cargo liquids using the legally unenforceable guidelines developed by the PoMC that may require to be given force by government intervention. Further, it considers if the proposed regulations are the most effective and efficient approach to addressing the problem, if a problem is identified.

Problem to be addressed

This RIS found that under the current management of bunkering and the transfer of other non-cargo liquids not otherwise captured in the Act:

- There are a number of incidents related to bunkering and the transfer of non-cargo liquid substances and bunker fuel within the PoM; there were 32 recorded bunker related spills in the PoM between 2005 and 2009, and 22 failure to comply were letters issued by the PoMC in 2008 and 2009.
- There is evidence that some port users are not complying with the current PoMC standards and procedures dealing with bunkering and the transfer of non-cargo liquids.

¹Ports Australia C.n.d., *Trade Statistics 2008/09* viewed 21 February 2010, <<http://www.portsaustralia.com.au/tradestats/>>.

² Bunkering means the transfer of liquid fuel to and from vessels and wharves in the port.

- Incidents related to the transfer of non-cargo liquid substances and bunker fuel can generate externalities for other port users and the local community.
- The nature of the risks from these incidents is such that it is appropriate to consider additional government action.

Objectives of government action

The objective of government action through these regulations is to reduce the incidence and risk of spills, delays in port operations and environmental damage related to bunkering and the transfer of non-cargo liquids.

Options considered

The options considered within this RIS to address the problem are as follows:

- Taking no further action – bunkering and the transfer of other non-cargo liquids continues to be managed by legally unenforceable guidelines.
- The proposed regulations – bunkering and the transfer of other non-cargo liquids is regulated by subordinate legislation supporting the Act.
- The application of contractual obligations – bunkering and the transfer of other non-cargo liquids is regulated by contractual obligations between the PoMC and individual port users.
- An education campaign – a campaign is used to promote increased adoption of the PoMC Guidelines.

Assessment of the options

The multi-criteria analysis of the options assessed them against the incremental change in operation with respect to the base case considering the following criteria: benefit to stakeholders, cost and enforceability. These criteria were ranked between -5 (significant negative impact) and 5 (significant positive impact). A 40 per cent weighting was applied to the benefit to stakeholder criterion, while both the cost and enforceability criteria were equality weighted at 30 per cent. Based on this assessment, the proposed regulations are the preferred option.

Table E.1: Summary assessment of options considered

Criteria	Proposed regulations	Application of contractual obligations	Educational campaign
Benefit to stakeholders	1.2	1.2	0.4
Cost	-0.6	-1.2	-0.3
Enforceability	1.2	0.6	0
Total	1.8	0.6	0.1

Preferred option

A *prima-facie* assessment of the multi-criteria analysis suggests that the proposed regulations are the preferred option. This analysis is based, in part, on the assumption that the proposed regulations will encourage a measurable level of behavioural change that will in turn result in fewer incidences associated with the transfer of non-cargo liquids and bunkering. It is important, therefore, to assess if the level of behaviour change required to ensure that the regulations are not a net cost seems reasonable and achievable.

It was estimated that the quantifiable cost of the preferred option was between \$54,300 and \$163,100 over a ten year period using a discount rate of 3.5 per cent. The estimate of costs does not include additional compliance costs resulting from equipment that is judged unsafe or faulty or the costs of an education campaign that the PoMC may initiate following the introduction of the proposed regulations. On average, the preferred option would cost (based on the quantifiable costs) between \$5,430 and \$16,310 per annum.

Box E.1: Sensitivity analysis

Data that could have helped to estimate current compliance rates for parties that are not contractually obligated to comply with the guidelines—such as the number of notifications currently made these parties, or the numbers of non-compliant parties that are discovered through inspections as a proportion of all inspections—are not available. Therefore, for completeness, a further cost sensitivity has been calculated. For this calculation a 65 per cent voluntary compliance rate with the guidelines for parties operating in the PoM that are not contractually obligated to comply with the guidelines has been assumed.

If the current compliance rate were 65 per cent, the total quantifiable cost of the proposed regulations is estimated to be \$380,300 over the ten year period (using a 3.5 per cent discount rate). As indicated above, PoMC reports the likely compliance rate is between 85 and 95 per cent, as such we consider a 65 per cent compliance rate to be unlikely.

For completeness, the cost of fulfilling the authorisation and notification requirements for hazardous port activities for PoM users is provided in the box below. These costs are attributable to the legislation rather than the proposed regulations, as this is where the requirement to undertake authorisation and notification for hazardous port activities resides (see Appendix A for more detail on the Act).

Box E.2: Other administrative costs

The assumptions used to estimate the costs to apply for authorisation and provide notification before undertaking hazardous port activities are similar to those used to estimate the cost of authorisation and notification for bunkering and non-cargo liquids.

- An estimated 85-95 per cent of port users that do not have a contractual obligation and 100 per cent of port users with a contractual obligation with the PoMC voluntarily comply with the guidelines i.e. between 50 and 100 port users do not comply.
- Both the application for authorisation and notification take 20 minutes.
- An average figure of \$33 per hour per staff member and an on-cost multiplication factor of 1.75.

Given that hazardous port activities cover a larger suite of activities, it has been assumed that on average each additional business will undertake ten activities (a combination of both applications for authorisation and notifications) a year.

The cost to business would be \$192.50 per year. The total additional cost to business of administration over a ten year period would be between \$80,000 and \$240,100.

Shipping lines advised during consultations that any lost time at port needed to be made up as the vessels operate on tight time frames. They also reported that increased fuel consumption as a result of having to make up lost time represented the major cost of delays at port. Stakeholders estimated that a one hour delay requires a ship to consume on average an extra 6.25 tonnes of bunker fuel at a cost of approximately \$600 per tonne. The analysis finds that if the number of hours of ship delays in the PoM is reduced by between 1.7 and 5.2 per year, the direct benefit will balance the cost of the proposed regulations.

The PoMC reports that any bunker fuel incident (no matter how small) that requires an oil spill response will result in a minimum four hour localised delay. For a spill of 450 litres, the delay (such

as the one provided as a case study in this RIS) while still localised, can be in the order of eight to ten hours.

The results of the breakeven analysis indicate that the benefits will outweigh the costs if the number of incidents occurring as a result of non-compliance are reduced by between one and two incidents per year (this is equivalent to a reduction in the number of incidences where a ship is delayed by four hours between four and 13 times over ten years). There is insufficient evidence, however, to determine whether the benefits of the changes will outweigh the costs.

Despite the lack of conclusive evidence, the Victorian Department of Transport believes that the introduction of the proposed regulations will produce net benefits that exceed those of the other options examined.

Impact of preferred option

If the preferred option is introduced, the proposed regulations will give regulatory backing to the PoMC's existing guidelines and contractual arrangements. These regulations will place a number of legislative requirements on shipping lines, bunker service operators and other responsible parties, including legal requirements to:

- apply for an authorisation and notify the PoMC prior to transferring non-cargo liquid substances and bunkering
- comply with the PoMC Guidelines relating to the transfer of non-cargo liquid substances and bunkering
- cease operations related to the transfer of non-cargo liquid substances and bunkering if the PoMC judges the activity to not comply with the PoMC Guidelines until such time as action has been taken to rectify the non-compliance issue.

Adopting the preferred option is expected to result in the following impacts on stakeholders:

- Minor implementation costs for the PoMC, as it is anticipated that it will undertake an education campaign to alert current port users to the change in regulatory arrangements.
- Very small marginal impact on the PoMC's resourcing requirements, as enforcement activities are already undertaken to monitor adherence to the PoMC Guidelines and contractual arrangements and to respond to incidents.
- No impact on businesses that are already complying with the voluntary guidelines.
- An additional administrative burden for those port users (estimated to be between 5 and 10 per cent of port users without contract) that are currently not complying with the voluntary guidelines.

Data constraints

There are a number of data limitations that impact on the rigour of the impact assessment. The data limitations include:

- Limited data on rates of compliance or which groups of port users are not complying with the current Guidelines.
- No data on the impact of regulatory reforms in the ports sector since the mid-1990s.
- No data is available on the impact of specific regulations in other jurisdictions.
- No evidence of a link between compliance with the PoMC's Guidelines and the occurrence of incidents.
- No data on the number of incidents caused by non-compliance with the PoMC Guidelines.
- Limited data on the impact of incidents on other port users.

Enforcement strategy

Implementation and enforcement strategies include:

- The development of standard operating procedures with respect to monitoring and enforcing compliance with the proposed regulations, including enhancing current audit arrangements.
- The development of a Code of Conduct.
- Training for port safety officers.
- The development of an internal review mechanism.

The costs of the implementation and enforcement strategies are difficult to accurately estimate as the majority of these strategies are already part of the PoMC's operations. While the PoMC will incur some costs in developing standard operating procedures and in developing a Code of Conduct, these costs are expected to be less than \$100,000 over five years. The costs are expected to form part of the PoMC's standard operating expenses.

Evaluation strategy

The PoMC will develop a monitoring and evaluation strategy for compliance with the proposed legislative amendments. The strategy would include such mechanisms as 12 month reporting, reporting in the PoMC annual report, and reporting to the Minister for Roads and Ports.

Public consultation

Preliminary consultation on the proposed regulation was conducted to ascertain if stakeholders considered that there was a problem, and the costs and benefits associated with each of the proposed options to address the problem.

The stakeholders interviewed during the development of the RIS all have contractual arrangements with the PoMC (further detail is provided in Appendix B). Given the nature of the port operations, it was not possible to engage with other, less frequent users of the port. As a result of their contractual arrangements, established relationship with the PoMC, and their own corporate risk management and responsibilities, all the stakeholders interviewed during the development of the RIS currently comply with the PoMC's voluntary guidelines.

Given that the purpose of the proposed regulations is to provide legislative backing to the requirements already in place, the consulted stakeholders did not identify any particular problems with the current operation and did not anticipate any impact or expected change in their own behaviour as a result of the proposed regulations.

A further consultation period of 28 days will be held upon the publication of the RIS. During this period, stakeholders will be invited to make further submissions on the proposed new regulations. The RIS will be advertised on the DoT website and in local newspapers, and hardcopies will be sent to the stakeholders listed in Appendix B.

Given the significant data limitations inherent in this assessment, input is specifically sought on the likely level of behavioural change brought about by the explicit regulation of bunkering and the transfer of non-cargo liquids, and the impact that it is likely to have on the frequency and severity of incidents within the PoMC.

Transport Integration Act 2010

In July 2009, the Government released the *Towards an integrated and sustainable transport future: A new legislative framework for transport in Victoria* policy statement, outlining a new policy framework to guide transport decisions aimed at achieving a more integrated and sustainable transport

system for Victoria.³ This announcement was central to the ongoing transport policy and legislation review process as it resulted in the establishment of the *Transport Integration Act 2010*, which codifies the new overarching policy framework and refreshes the institutional settings for the entire transport portfolio, including marine and ports.

The *Transport Integration Act 2010* came into operation on 1 July 2010 and is now the central overarching piece of transport legislation in Victoria, which must be taken into consideration for all new transport regulatory activities.

By regulating hazardous port activities and thereby potentially reducing the likelihood of incidents at the PoM, the proposed regulations impact more on the transport system objectives of economic prosperity, environmental sustainability and safety and health and wellbeing than on social and economic inclusion, integration of transport and land use and efficiency, coordination and reliability. Appendix D provides a table which discusses this in more detail.

As part of the transport integration framework, the *Transport Legislation Amendment (Ports Integration) Act 2010*, was developed to consolidate the PoM and the Port of Hastings into the broader transport framework. It recognises that the ports and the broader transport system are connected and aims to ensure integrated system thinking in port planning and management.

Upon commencement of the *Transport Legislation Amendment (Ports Integration) Act 2010*, the PoMC will be responsible for managing the Port of Hastings. However, the proposed regulations will only apply to the PoM land and waters.

³ Victorian Government 2009, *Towards an integrated and sustainable transport future: A new legislative framework for transport in Victoria*, Policy Statement July 2009, pp. 5-6.

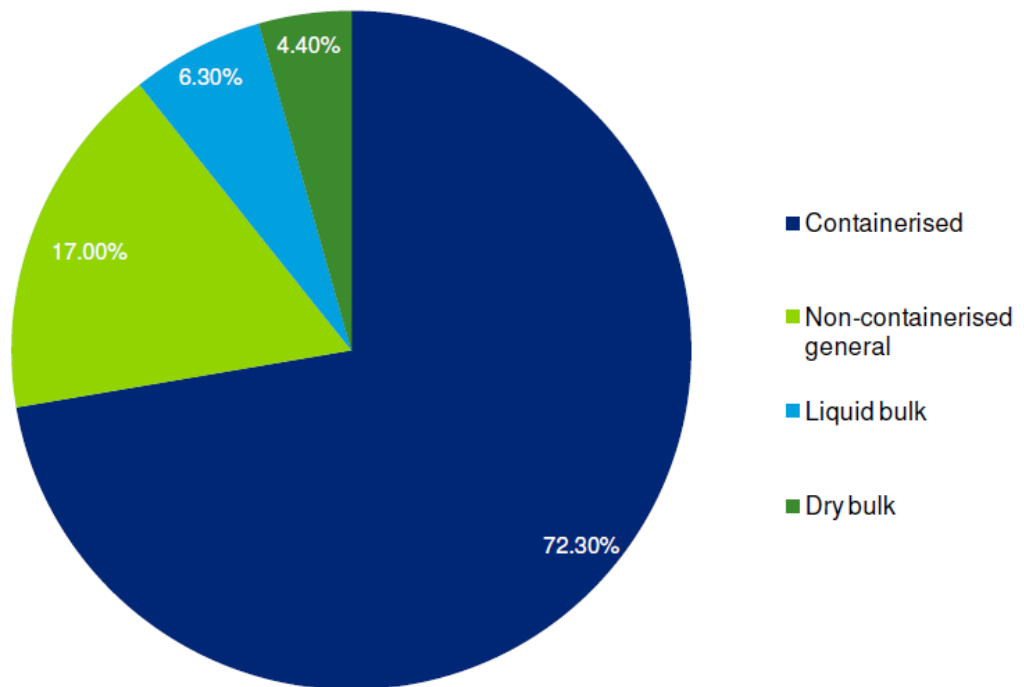
1 Background

1.1 Port of Melbourne

The PoM covers over 500 hectares of land and consists of 34 commercial berths at five docks, river wharves, Gellibrand Pier in Williamstown and Station Pier in Port Melbourne. There are three specialised berths for liquid bulk cargoes such as liquid chemicals, petroleum products and crude oil, and five specialised berths for dry cargo such as grain, cement, sugar and gypsum. Aside from specialised berths, the PoM also has four general cargo docks and two international container terminals.⁴

The PoM is Australia's largest port by value, handling over \$75 billion in international and coastal trade each year.⁵ Dry and liquid bulk trade makes up approximately 10.7 per cent of the value of all trade through the Port (Figure 1.1).

Figure 1.1: Value of PoM trade by cargo type (2008-09)



Source: Port of Melbourne Corporation, 2009, *Annual Report 2008-09*, Melbourne.

Although bulk trade is a small proportion of total trade volumes at the PoM, it is still very significant in absolute terms. There is currently:

- three million tonnes of dry bulk trade imported or exported through the PoM each year, with this volume expected to more than double by 2035
- four million tonnes of liquid bulk trade imported or exported through the PoM each year, with this volume expected to increase by more than 80 per cent by 2035.⁶

⁴ Port of Melbourne Corporation, 2009, *Customer Handbook 2009-10*, Melbourne.

⁵ Ports Australia C.n.d., *Trade Statistics 2008/09*, viewed 21 February 2010, <<http://www.portsaustralia.com.au/tradestats/>>.

Upon commencement of the *Transport Legislation Amendment (Ports Integration) Act 2010*, the Port of Melbourne Corporation will be responsible for managing the Port of Hastings. It is to be noted that the proposed regulations will only apply to the Port of Melbourne.

1.2 Port of Melbourne Corporation

The PoM is owned and operated by the PoMC, which is a statutory corporation. The PoMC's activities include managing leases and licences, providing cargo storage areas adjacent to common user wharves, providing wharf facilities and setting and monitoring standards and guidelines for the handling of dangerous cargoes within its areas of direct control.⁷

The key legislation covering the PoM is the *Port Services Act 1995* (the Act) (to be renamed the *Port Management Act 1995* upon passage and the commencement of the *Transport Legislation Amendment (Ports Integration) Act 2010*). The Act contains no formal objective; however, its purpose covers a broad range of areas, including the management and operation of commercial trading ports and local ports in Victoria.

Under the Act, the PoMC is charged with:

- managing and developing the Port in an economically, socially and environmentally sustainable manner
- ensuring that essential port services are available and cost effective
- ensuring, in cooperation with other relevant responsible bodies, that the Port is effectively integrated with other systems of infrastructure in the State
- facilitating, in cooperation with other relevant responsible bodies, the sustainable growth of trade through the Port
- establishing and managing channels in Port waters for use on a fair and reasonable basis.

The functions of the PoMC are prescribed by the Act and are listed in Box 1.1.

⁶ Port of Melbourne Corporation, 2009, *Port Development Strategy 2035 Vision*, Melbourne.

⁷ Port of Melbourne Corporation, 2009, *Safety & Environment Management Plan*, Melbourne.

Box 1.1: Port Services Act 1995, section 13

- (a) to plan for the development and operation of the port of Melbourne
- (b) to provide land, waters and infrastructure necessary for the development and operation of the port of Melbourne
- (c) to develop, or enable and control the development by others of, the whole or any part of the port of Melbourne
- (d) to manage, or enable and control the management by others of, the whole or any part of the port of Melbourne
- (e) to provide, or enable and control the provision by others of, services for the operation of the port of Melbourne
- (f) to promote and market the port of Melbourne
- (g) to facilitate the integration of infrastructure and logistics systems in the port of Melbourne with relevant systems outside the port
 - (ga) to manage and, in accordance with standards developed by the Director of Marine Safety, to dredge and maintain channels in port of Melbourne waters
 - (gb) to provide and maintain, in accordance with the standards developed by the Director of Marine Safety, navigation aids in connection with navigation in port of Melbourne waters
 - (gc) generally, to direct and control, in accordance with the Marine Act 1988, the movement of vessels in port of Melbourne waters
- (h) any other functions that are conferred on the Corporation by or under this or any other Act.

1.3 Legislative amendments

In 2001, *The Next Wave of Port Reform in Victoria* identified deficiencies in the regulations addressing safety issues resulting from the national port reform process in the 1990s.⁸ This review noted that, as a consequence of the regulatory reforms in the ports sector since the mid-1990s, a range of environmental and safety risks at the PoM were unregulated by the Act or by any other marine safety, occupational health and safety or environmental protection legislation. See Appendix C for a description of the other key regulators that interact with PoM operators. The review noted:

There is a substantial need for the improvement in arrangements for port safety. Between 1995 and 2001, accountabilities for safety in the port environment were fragmented excessively.

... The institutional arrangements introduced by the port reform package have left significant “grey areas” which have required a series of memorandums to be concluded between agencies to resolve working arrangements.⁹

In response to this review, amendments to the Act were proposed as it had been found that (prior to the legislative amendment) the following activities were unregulated within the PoM:

- Transfer of liquids and bulk cargoes
- Hot work on ships
- Abandoned property including vessels and vehicles abandoned or dumped in port waters, and vehicles, trailers and other property abandoned on port land.

There was, therefore, no mechanism for ensuring compliance with safety standards and procedures. The potential impact of this regulatory gap could have been significant in some circumstances.

⁸ Russell, EW, 2001, *The Next Wave of Port Reform in Victoria: An independent report to the Minister for Ports*, Report for the Victorian Department of Infrastructure, Melbourne.

⁹ Ibid.

¹¹ Ibid.

Although the likelihood of a catastrophic event due to unregulated hazardous port activities was determined to be low, the potential economic impacts could be significant for the PoM, Victoria and parts of the national economy. For example, it was estimated that the closure of the PoM due to a hazardous activity incident could result in delay costs for port users of approximately \$3.3 million per day. The total cost to the economy would be significantly larger.¹¹

The Act was amended in 2009 through the *Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009* to empower the PoMC to regulate hazards at the port that are not regulated by other legislation. Box 1.2 provides the text from the Second Reading Speech relevant to the amendments to the *Port Services Act 1995*.

Box 1.2: Transport Legislation Amendment (Hoon Boating and Other Amendments) Bill 2009, Second Reading Speech

The Port of Melbourne Corporation has identified some safety and other risks associated with bunkering or ship-to-ship transfers of dry and liquid cargoes, and also hot works in the port.

These activities are currently regulated by a range of measures including directions of the harbour master, guidelines and protocols, along with a mix of environment and occupational health and safety legislation.

It is proposed to strengthen these arrangements by providing new heads of power in the Act. This will enable regulations to be made to deal with these risks, including a requirement to notify the Port of Melbourne Corporation when a person intends to conduct a hazardous activity in the port.

The Corporation has also found that its current powers relating to unattended or abandoned property are insufficient. Accordingly, new provisions are being introduced into the Port Services Act to ensure that the corporation is able to appropriately manage these activities.

Further, it is important that the Port of Melbourne Corporation has sufficient power to enforce these provisions as well as other relevant legislative provisions affecting the safety and efficiency of port operations."

The Bill makes provision for the appointment of port safety officers. The officers are conferred with power to enforce the Port Services Act, relevant regulations and other instruments to ensure compliance with safety and other standards throughout the port precinct."

Source: Victoria, *Parliamentary Debates*, Legislative Assembly, 29 November 2009, 4301 (Tim Pallas, Minister for Roads and Ports).

Prior to the amendments to the *Port Services Act 1995*, the PoMC was not vested with enforcement powers to compel port users to comply with safety, security and environmental management requirements which arise from these activities.

The amendments in the Act directly provided the PoMC with the power to:

- conduct a clean up and recover costs from the responsible party if there is, or is likely to be, pollution or an environmental hazard due to a hazardous substance on the Port's land or in the waters
- require a person to give notice to the PoMC of their intent to carry out a hazardous port activity
- direct a person to cease conducting a hazardous port activity and leave the area or the Port
- remove any item left unattended for more than a month on the Port's land or waters without the permission of the PoMC if the owner cannot be identified or won't move the property
- immediately remove an item causing an impediment to port operations, causing an environmental hazard, risking port safety and security or endangering public health if the owner cannot be identified or won't move the property
- dispose of unattended property and recover the costs of movement, storage and disposal either through sale of the item or from the owner via court
- prosecute and make regulations with respect to specified activities.

1.4 Proposed regulations

In order to support the amendments to the *Port Services Act 1995*, the Victorian Department of Transport has developed the draft *Port Services (Port of Melbourne Safety and Other Matters) Regulations 2010*. This subordinate legislation:

- empowers PoMC to regulate bunkering and the transfer of non-cargo liquids
- provides detail around the other aspects referred to in the primary legislation.

The proposed regulations make use of the “regulation making powers” included in the amendments to the Act to impose certain requirements and responsibilities on the PoMC and port users with respect to the transfer of non-cargo liquids and bunkering. This activity is not included in the definition of “hazardous port activity” in the Act and as such is not regulated by the Act.¹²

The transfer of non-cargo liquids includes all activities associated with refuelling of vessels (referred to as bunkering) and the transfer of other liquids required for operation.

Box 1.3 defines bunkering and the transfer of other non-cargo liquids.

Box 1.3: Definition of bunkering and the transfer of non-cargo liquids

Bunkering means the transfer of liquid fuel to and from vessels and wharves in the port. Bunkering can take place either from road tankers while a vessel is berthed or from a bunkering barge while the vessel is berthed or anchored in port.

Non-cargo liquid substances that may be transferred to and from vessels at the PoM include waste oil, sludge, sediments and recycled oil, tank/hold washing residues, grey water and sewage. These transfers are usually made into road tankers licensed by the EPA, with the waste materials being disposed of at prescribed waste disposal facilities.

Table 1.1 summarises whether the power, penalties and administrative detail for the management of abandoned property, hazardous port activity and the transfer of non-cargo liquids is found in the Act or the proposed regulations.

Table 1.1 Elements of the Act and the proposed regulations

Element	Act			Proposed regulations		
	Power	Penalties	Administrative detail	Power	Penalties	Administrative detail
Abandoned property	✓	✓				✓
Hot works	✓	✓				✓
Transfer of dry or liquid cargo	✓	✓				✓
Transfer of non-cargo liquids (including bunkering)				✓	✓	✓

Note: Power refers to the source of authority to control an activity, penalty refers to the penalties for failing to adhere to the requirements of the legislation or regulations, and administrative detail provides terms for regulating the action.

¹² The Act defines “hazardous port activity” as any activity involving the following:

- The transfer of dry or liquid cargoes to and from vessels or wharves Hot works, being welding, thermal or oxygen cutting or heating or any other heat producing or spark producing activity.

The proposed regulations also provide detail on how to comply with the PoMC's new powers to manage hazardous port activities and abandoned property, including detail around:

- the notification processes required by persons intending to conduct hazardous port activities and the penalties for non-compliance
- when and how the PoMC may authorise hazardous port activities
- the conditions the PoMC may attach to hazardous port activities, and when and how the PoMC may suspend, cancel or vary an authorisation
- penalties for non-compliance with the conditions of authorisation or other directions from the PoMC
- penalties if the PoMC is not notified of an incident involving a hazardous port activity
- recovery of costs for clean up by the PoMC of incidents associated with hazardous port activities
- the notification of identified owners of abandoned or unattended property
- keeping a register of abandoned or unattended property.

The regulations have implications not just for the PoMC but also for shipping lines and bunker fuel providers.

Appendix A illustrates the differences between the Act and the propose regulations in more detail.

1.5 This report

This report is a Regulatory Impact Statement (RIS) commissioned by the Victorian Department of Transport to assess the impact of the proposed *Port Services (Port of Melbourne Safety and Other Matters) Regulations 2010*.

Section 10 of the *Subordinate Legislation Act 1994* (SL Act) requires that a RIS must be prepared in respect of a proposed statutory rule or amendment unless an exception certificate is issued. The Department of Transport (DoT) is responsible for developing the port services regulations and is required to develop a RIS in accordance with the SL Act for the new regulations.

The purpose of this RIS is to assess the nature and extent of the problem associated with current management practices surrounding bunkering and the transfer of non-cargo liquids and to identify and assess all potential responses, including the proposed regulations, which may be appropriate. Only the aspects of the proposed regulations that are held to impose an appreciable burden are assessed in the RIS.

The report is structured as follows:

- Chapter 2: sets out the nature and extent of the problem
- Chapter 3: defines the objective of government action
- Chapter 4: outlines the options that may achieve the objective
- Chapter 5: assesses the proposed options and identifies the preferred option
- Chapter 6: contains the implementation and evaluation strategy
- Chapter 7: contains the statements of compliance, namely: the impact on small business; assessment of competition impacts; and the administrative burden statement.

The following appendices are attached to the report:

- Appendix A: Comparison of the Act and the proposed regulations
- Appendix B: Consultation strategy

- Appendix C: Other PoM regulators
- Appendix D: Bibliography.

2 Nature and extent of the problem

Government regulation is sometimes necessary to achieve certain economic, social and environmental goals, however, excessive or poorly developed regulation can impose costs on society that outweigh the benefits of the regulation. To achieve ‘good’ regulation, it is important to first identify the nature and extent of the problem that is being addressed. The following discussion illustrates the source, nature and scale of the problem and discusses why the market and existing regulation will not provide a satisfactory outcome.

2.1 Bunkering and transferring of non-cargo liquid substances

In 2008-09, 216 bulk liquid transfers and 1472 bunker fuel transfer notifications (and applications for authorities) were received by the PoMC. Between the start of the 2009-10 financial year and February 2010, 712 bunker fuel transfer notifications (and applications for authorities) were received.

Bunkering and non-cargo liquid transfer activities are currently controlled by Harbour Master Directions through the Operations Handbook, the Bunker Transfer Guidelines published by the PoMC and, in some instances, through contractual requirements.

The Handbook and Guidelines set out minimum safety and environmental management requirements. There are, however, currently no legislative sanctions for failing to comply with these requirements, and the PoMC has no power to compel bunkering to cease while non-compliances are addressed.

The PoMC exercises influence over bunkering and non-cargo liquid transfer activities for those port users who lease port land or who conduct licensed activities at the PoM through contracts and licence conditions. In 2008-09, none of the applicants for bulk liquid transfers or bunker fuel transfers had a contract with the PoMC. The voluntary nature of the Guidelines is limited to those operators who do not lease land from the PoMC or undertake licensed activities. The PoMC estimates that 1,000 such businesses currently operate within the PoM within a given year.

2.2 The extent of the problem

The extent of non-compliance with the current Guidelines is, by its very nature, unknowable. Stakeholders consulted during the development of this RIS were unable to identify specific incidents or particular problems with the current operations (see Appendix C for more detail). Recorded incidents, however, can be used as a proxy to determine if non-compliance is generating a problem.

Between 2005 and 2009 there were 32 recorded incidences of spills in the PoMC incident register related to bunkering or the transfer of other non-cargo liquids.¹³ Table 2.1 summarises these incidents.

¹³ Deloitte analysis of the PoMC incident register.

Table 2.1 Incidents resulting from hazardous and bunkering activities

Incident	2005	2006	2007	2008	2009
Bunker spill	2	3	1	1	3
Non-cargo liquid spills	3	1	7	6	5
Grand Total	5	4	8	7	8

Source: Deloitte analysis of the PoMC incident register

The incident rate is relatively low (0.5 per cent of bunkering activities in 2008-09 resulted in a spill); however, there are potentially serious safety and environmental consequences which can result from such activities. These risks include fuel and lubricant spills and the risk of significant environmental damage. Box 2.1 provides an example of a recent bunkering incident within the PoM. The risk of such incidents is expected to rise as vessels increase in size and as activity in the port increases.

Box 2.1: Case study – bunkering incident within the PoM

On 14 October 2009 at 2:10pm, a vessel berthed at the Maribyrrong No.1 berth was conducting the discharge of non-hazardous bulk liquid cargo and undertaking loading via a bunker barge of 200 tonnes of Intermediate Fuel Oil (IFO) and 30 tonne of Marine Gas Oil. Thirty minutes after the start of these activities, IFO flowed over the port side rear of the ship's accommodation.

The spill over the side of the vessel appeared to flow for approximately 30 seconds. The Oil Response Company of Australia (ORCA), who manage responses at the PoMC, was onsite within the hour. Fortunately, the weather and tide conditions restricted the movement of the oil spilt on the water. It took ORCA nine hours to clean up the spill. Approximately 450 litres of oil were recovered from the water during the clean up process.

The estimated cost of cleanup for this incident was \$22,000, which includes the PoMC response and investigation, the ORCA attendance and recovery operations, waste disposal and equipment clean up. These costs do not include the delay costs to other port users or the impact on the local marine environment.

The photo to the right was taken by PoMC investigations staff following the spill and illustrates the extent of the pollution.



The PoMC has also issued 22 failure-to-comply letters to ships' agents for failing to apply for authorisation or provide notification prior to conducting bunker transfers as required by the PoMC Guidelines in 2008 and 2009. These letters were sent to the ships agents who have no direct contract with the PoMC. They represent instances of non-compliance with the PoMC Guidelines that were detected by the PoMC bunker inspectors and subsequently inspected. The recipients of the letter replied on each occasion confirming acceptance of the PoMC observations and that they would adhere to guidelines in the future.

Outside of this process, the PoMC cannot take any action for further non-compliance. These failure to comply notices were based on administrative non-compliances (for example, failure to seek an authority), which means that a bunkering activity was undertaken without inspection which may have lead to unsafe practices and possibly an incident.

It is plausible that other instances of bunker transfer could have occurred without the PoMC inspection staff detecting them. As such, this figure should be considered a lower bound for the incidence of non-compliance.

Significant data constraints have affected the level of analysis that is possible in this chapter. There is no data available in relation to whether there has been an increased rate of adverse incidents related to bunkering and the transfer of non-cargo liquids since the regulatory reforms in the ports sector were implemented in the mid-1990s. In addition, other Australian ports that have introduced specific regulation to manage the transfer of non-cargo liquids were unwilling or unable to provide data on the impact on the number of incidents that resulted from the introduction of the regulation. *The Next Wave of Port Reform* and other studies were unable to find sufficient data to quantify the problem or the market failure. There is, therefore, only an anecdotal link between compliance with the PoMC's Guidelines and the occurrence of incidents within the PoM.

2.2.1 Risk assessment

The *Victorian Guide to Regulation* recognises risk analysis as a valuable tool in addressing the threshold issue of whether or not government should intervene. The guide recommends that the level of risk should be assessed by combining the consequences of an adverse event occurring and the likelihood or probability that these impacts will occur. In assessing the consequences, consideration needs to be given to the size of the population likely to be affected, and the severity of the impact on those affected.¹⁵

In this instance, the likelihood of a serious incident as a result of bunkering or non-cargo liquid transfers is low. The consequence of a serious incident within the PoM, however, could be very significant. A serious incident could cause all operations within the PoM to be suspended for a day or more. It had previously been estimated that the cost to port users alone of suspending operations in the PoM was \$3.3 million per day. This cost does not take into consideration the flow on affects to the Victorian and national economies of suspending operations, the cost of the clean up, the impact on the marine environment and the reputational damage to the PoM as a reliable port. As such, the true cost of an incident that caused the port to suspend operations would be much greater and would have an impact on a considerable number of businesses.

¹⁵ Government of Victoria, 2007, *Victorian Guide to Regulation*, Department of Treasury and Finance, Melbourne

¹⁷ Carson, R, Mitchell, R, Hanemann, M, Kopp, RJ, Presser, S & Rudd RP 2003, 'Contingent Valuation and Lost Passive Use: Damages from the Exxon Valdez Oil Spill', *Environmental and Resource Economics*, vol.25, March, pp. 257-286.

Figure 2.1: Risk assessment of bunkering and the transfer of non-cargo liquids

Likelihood	High	Medium risk	High risk	High risk
	Medium	Low risk	Medium risk	High risk
	Low	Low risk	Low risk	Medium risk
		Low	Medium	High
		Consequence		

Note: the level of risk associated with the likelihood and consequence of an incident from bunkering or the transfer of non-cargo liquids represents a judgement and there is necessarily a degree of uncertainty surrounding this assessment.

The above evaluation of the likelihood and consequence of the risks associated with bunkering and non-cargo liquid transfers has been applied to the risk matrix illustrated in Figure 2.1. Using the risk matrix, the overall risk associated with these activities has been determined to be medium.

2.3 The market failure

There is a clear economic case for government intervention in markets where some form of market failure is taking place. In such instances, government intervention may be in the public interest. Key market failures which may justify government intervention include:

- Uncompetitive markets – this occurs when a firm or firms have the power to raise the market price above that which would occur in a competitive market. This leads to artificial scarcity and a decline in economic efficiency reducing the welfare of consumers – *not relevant for this RIS*.
- Public goods – these are goods which are non-rivalrous and non-excludable. Non-rivalry means that the consumption of the good by one person has no impact on the quantity of the good available for consumption by others. Non-excludability means that it is not possible to exclude non-payers from consuming the good. When these two conditions are satisfied, government intervention may be justified as the supply of the good is likely to be suboptimal in a free market due to the ability of consumers to free-ride – *not relevant for this RIS*.
- Externalities – these are impacts from the production or consumption of a good on a third party not part of the transaction. In such cases, government intervention may be justifiable to decrease or increase production and/or consumption of the good to accurately reflect the full costs and benefits of the good – *highly relevant for this RIS*.

2.3.1 Externalities

Externalities occur when a transaction has an impact on a party that is not directly involved. Negative externalities in the PoM arise where port users do not incur all the costs of their actions. In the case of spills resulting from the transfer of non-cargo liquids or bunkering, the cost of the spill borne by the responsible party or parties is the cost of the clean up and the delay of the vessel or vessels directly

involved. The cost does not reflect the impact on other port users resulting from the spill to or to the community. The externalities in this instance are:

- the delay of other port users resulting from the suspension of operations within a localised area or throughout the port
- damage to the marine environment
- the negative impact the emission of pollutants has on the quality of life for the local community.

These externalities are difficult to cost, however, the most tangible cost is the delay costs for shipping companies and companies that specialise in cargo handling. Box 2.2 provides some examples of delay costs.

Box 2.2: Delay costs to shipping lines and cargo handling companies

Example of delay costs provided during the consultations included the following:

- A delay to a vessel will require the ship's crew to compensate for the delay by travelling faster and using more fuel than is optimal. An eight hour delay will result in the consumption of an extra 50 tonnes of bunker fuel at a cost of \$600 a tonne
- A cargo handling company indicated that a day of suspended operation would cost their company approximately \$500,000 in revenue
- Previous estimates suggest that suspending the operation of the PoM for a day would result in a cost of \$3.1 million to businesses.

Due to the lack of a market for natural resources such as the marine environment in the real world, these resources cannot be directly measured in monetary terms and thus externalities that impact on environmental assets are much more difficult to cost. In order to address this, methods have been developed to estimate consumer hypothetical or actual willingness to pay, sacrifice or exchange for a good.

Box 2.3 provides some relevant examples of willingness to pay estimates for avoided environmental damage to marine environments. These studies demonstrate the importance placed on the health of the marine environment by the community and the willingness to invest to avoid damage. These examples deal with the desire to avoid a large oil spill. The PoM is only one of many sites in Victoria where the risk of an oil spill needs to be managed; hence Victorians' willingness to pay for improved practices within the PoM is anticipated to be a fraction of the value suggested by these studies.

Box 2.3: Willingness to pay estimates for avoided environmental damage

In the wake of the Exxon Valdez oil spill in 1989, which spilt 11 million gallons of crude oil into the Prince William Sound, a study was undertaken to determine willingness to pay metrics to prevent further oil spills of this magnitude. The median willingness to pay was found to range from US\$30 to US \$60 per person.¹⁷ This result is similar to another study which found that the mean willingness to pay to avoid a future oil spill in Spain similar to the Prestige oil spill (which spilt 77,033 metric tons of oil off the coast of Spain) was €40.51 per household.¹⁸

Note: No relevant Australia study on willingness to pay estimates for avoided environmental damage could be located.

Whether market failure arises from externalities, public goods, or uncompetitive markets, the role of government intervention is to strike the socially optimal balance between economic activity resulting from the use of the PoM on the one hand, and risks to those resources on the other.

¹⁸ Loureiro, M, Loomis JB & Vazques MX, 2009, 'Economic Valuation of Environmental Damages due to the Prestige Oil Spill in Spain', *Environmental and Resource Economics*, vol.44, December, pp. 537-553.

2.4 Regulation in other jurisdictions

The other major commercial ports in Australia have varying legislative regimes covering their activities. A review of the legislation shows that ports in New South Wales, South Australia and Tasmania have the ability to control and regulate bunkering activities. Regulation in New South Wales is as onerous as the proposed regulation in this RIS, while the requirements in South Australia are less onerous because they only apply to bunkering at night. It is not known why other jurisdictions have not sought to control these activities.

Table 2.2: Summary of regulation in other jurisdictions

New South Wales	<i>Management of Waters and Waterside Lands Regulations 1972 (made under Maritime Services Act 1935)</i>	Prohibits a person from replenishing or exchanging the fuel container of any vehicle, compressor, generator, or other machine, on public wharves, without the consent of the Maritime Services Board (r103)	Maximum penalty of \$1,500 and in the case of any continuing offence a maximum penalty of \$80 per day (r118).
South Australia	<i>Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987</i>	Controls the transfer of oil at night and requires written permission to do so (s35)	Maximum penalty: \$8,000.
Tasmania	<i>Pollution of Waters by Oil and Noxious Substances Act 1987</i>	Restricts the transfer of oil at night (s15)	If the offender is a natural person—a fine not exceeding 1 250 penalty units paid to the port operator or imprisonment for a term not exceeding 2 years. If the offender is a body corporate—a fine not exceeding 5 000 penalty units paid to the port operator.

2.5 Case for government intervention

It is important for a RIS to conclude whether there is a case for government intervention to address the identified problem, over and above what is currently occurring. Under best practice regulation guidelines, government intervention can be justified when:

- there is an inherent failure in the market's ability to deliver fair and equitable outcomes, and
- the benefits from correcting the failure are greater than the costs associated with doing so.

Assessing the need for government regulation requires the identification of the potential cost of not addressing the problem. For this RIS, this would be the failure to comply with safety and environmental standards resulting in a significant spill or other catastrophic event that leads to the suspension of operations in all or part of the PoM and the pollution of the marine environment.

In broad terms, government intervention might be justified where the potential harm is significant (for example, where the nature of the risks posed by a particular transaction would have serious consequences). In assessing the significance of the harm, there must be consideration not only of the potential consequences, but also:

- whether or not the impacts are reversible
- whether the risk is involuntary or voluntary

- the likelihood of that harmful outcome occurring.

In this instance, there are a number of potential risks under the current management approach for the transfer of non-cargo liquids and bunker fuel. The true likelihood of these risks eventuating is unknown because non-compliance, by its very nature, is very difficult to monitor. However, given the number of incidents related to bunkering and the transfer of non-cargo liquid substances, the potential to cause catastrophic consequences in the port and surrounding areas, and the involuntary nature of the risk for members of the local community and other port users, there is a rationale for government to consider alternative options to address the problems identified. These options are explored in the following chapters of this RIS.

3 The objective of government action

Prior to assessing options to address the identified problems, it is important to establish the objectives of any government action independent of any individual solution so that the analysis does not pre-justify a preferred solution. The objective should be clear and sufficiently broad to allow consideration of all relevant alternative solutions.

The previous chapter established that:

- there are a number of incidents related to the transfer of non-cargo liquid substances and bunker fuel within the PoM
- there is evidence that some port users are not complying with the current PoMC standards and procedures dealing with bunkering and the transfer of non-cargo liquids
- incidents related to the transfer of non-cargo liquid substances and bunker fuel can generate externalities for other port users and the local community
- the nature of the risks from these incidents is such that it is appropriate to consider additional government action.

For the purposes of this RIS, the objective of government action is to reduce the incidence and risk of spills, delays in port operations, and environmental damage related to bunkering and the transfer of non-cargo liquids.

4 Options that may achieve the objective

As part of the RIS process, it is necessary to describe and consider the different options that can be used to achieve the stated objective. The Victorian Department of Treasury and Finance's (DTF) *Victorian Guide to Regulation* recommends that the options considered represent the spectrum of regulatory approaches, including explicit government regulation, co-regulation and non-regulatory approaches.¹⁹

This RIS considers a number of options for achieving the stated objective. These are:

- taking no further action
- the proposed regulations
- the application of contractual obligations
- an education campaign.

4.1.1 The base case

Cost-benefit analysis seeks to estimate the incremental or induced impacts to stakeholders that can be directly attributed to the proposed options. In order to do so, it is necessary to have some idea of what would have happened if none of these options were exercised – effectively, if the current approach was maintained.

Under the base case, it is assumed that the PoMC will continue to publish guidelines and protocols to control and influence behaviour in the PoM, including guidelines for the safe transfer of bunker oil and for bulk liquid cargoes more generally. The Guidelines indicate that permission for each of these practices must be obtained first from the PoMC. As such, the transfer of non-cargo liquids, including bunker fuel, will continue to be regulated using the voluntary guidelines and contractual obligations (requiring adherence with the Guidelines) where possible.

Currently, permission to undertake these activities involves the application for authorisation and notification to carry out bunkering activity by emailing a request to the PoMC. Notification is in the form of a one page template provided by the PoMC. The form requires the port user to identify the type and size of the cargo or non-cargo movement, the purpose of the activity and intended date of the activity. Bunkering operations are subject to port inspections and the vessel's Master is responsible for notifying the bunker inspector one hour prior to the start of the bunkering operations.

PoMC currently has approximately 240 contracts with operators within the PoM (either as result of licence arrangements or land lease arrangements):

- Licence arrangements for either businesses or individual service providers – in the order of 90.
- Land lease agreements – in the order of 150.

In addition, the PoMC estimates that approximately 1000 individual vessels come through the port on an annual basis that are involved in some sort of hazardous port activity (including bunkering, bulk dry or liquid transfers, or hot works).

¹⁹ Government of Victoria, 2007, *Victorian Guide to Regulation*, Department of Treasury and Finance, Melbourne.

It is assumed, under the base case, that all of the businesses that are contractually obliged to comply with the Guidelines are doing so and between 85 and 95 per cent of the remaining businesses are also complying on a voluntary basis. The assumed level of compliance reflects the range of other motivating factors that would lead the majority of businesses to comply without explicit regulation. These factors include:

- corporate risk management
- the need to maintain a good working relationship with the PoMC.

This assumption has been tested with the PoMC and it considers that the assumed level of compliance is reasonable based on the results of an audit for applications for hazardous port activities plus an assumption of the level of non-compliance where these activities that are carried out without application. All stakeholders involved in consultations indicated that they complied with the guidelines.

4.1.2 The proposed regulations

This option would aim to achieve the government objective through adoption of the proposed regulations. Introducing the proposed regulations would result in new powers and responsibilities for the PoMC with regards to the transfer of non-cargo liquid substances and bunkering. These regulations will place a number of requirements on shipping lines, bunker service operators and other responsible parties, including the legal requirements to:

- apply for an authorisation and providing the PoMC with notification prior to the transfer non-cargo liquid substances and bunkering
- comply with the PoMC Guidelines relating to the transfer non-cargo liquid substances and bunkering
- cease operations related to the transfer of non-cargo liquid substances and bunkering if the PoMC judges the activity to not comply with PoMC Guidelines until such time as action has been taken to rectify the non-compliance issue.

Particularly, the proposed regulations require:

- a person who proposes to carry out bunkering or a liquid transfer to include details of the proposed location of the activity within the PoM when applying for an authority
- the PoMC to issue an authority that is valid for up to three years unless the PoMC is of the opinion that the activity will create a significant risk of injury or damage, will significantly interfere with the orderly operation of the port or any other authorised activities, or will interfere with other PoM users
- a person with an authority to notify the PoMC at least 24 hours prior to carrying out bunkering or a liquid transfer with details of the proposed location in the port and the date and time of the activity
- that the PoMC reasonably believes that continuing use of an authority could cause significant risk of harm to any person, any property or the environment or significantly interfere with port management before issuing a suspension of an authority
- that the PoMC reasonably believes that continuing use of an authority could cause significant risk of harm to any person, any property or the environment, significantly interfere with port management, or the holder of the authority has contravened the regulations or a condition of the authority before cancelling an authority.

These conditions exactly mirror the PoMC guidelines and contract conditions that are currently in operation.

The regulations also require the PoMC to maintain a register of abandoned property. The PoMC has advised it already undertakes this activity. As such, this requirement exactly mirrors current procedure by the PoMC.

This option gives regulatory backing to the PoMC's existing guidelines and contractual arrangements. It is possible there may, from time to time, be changes made to the PoMC Guidelines, and hence requirements under the proposed regulations. However, these changes are expected to be minimal. It is noted that it is not possible to quantify the costs of any future changes to these guidelines.

The PoMC has reported during consultations that the introduction of the proposed regulations is not expected to have an impact on the PoMC's resourcing requirements. PoMC already undertakes enforcement activities to monitor adherence to the PoMC's guidelines and contractual arrangements and to respond to incidents.

For those businesses that are already complying with the voluntary guidelines, this option will not represent an additional burden. However, those port users that are currently not complying with the voluntary guidelines, but will comply with the proposed regulations, this option will result in an additional burden. In addition to the administrative burden, complying with the proposed regulations may also result in additional compliance costs, particularly if the port users are operating with faulty equipment.

4.1.3 The application of contractual obligations

This option would aim to achieve the government objective by contractually binding port users to notify the port of any intended transfer of non-cargo liquids and bunkering. The PoMC currently uses contracts to impel port users that lease port land or that conduct licensed activities at the port to comply with the PoMC's environmental guidelines and protocols. It is estimated that there are approximately 1000 businesses that operate in the PoM in any given year that do not have an existing contractual arrangement with the PoMC.

Under this option, the PoMC would contact each of the additional businesses and introduce a standard contract requiring adherence with the PoMC guidelines. There is no obvious point of interception to introduce a contract and some port users are only in the port for a very short time (1-2 days). As such, the process of identifying, contacting and introducing a contract would need to be undertaken on a case by case basis.

4.1.4 Education campaign

This option would aim to achieve the government objective through an education campaign promoting the use of the Guidelines within the PoM.

4.1.5 Non-feasible options

4.1.5.1 Regulation by amendment to other legislation

As noted in Appendix C, general legislation and regulation - such as that relating to environmental protection and occupational health and safety - also apply to operators of services at the PoM. However, the current scope of these instruments is not sufficiently broad to allow them to deal with the issues identified in this RIS. As a result, regulation by amendment to other legislation was initially identified as an option, but after consideration, was determined not to be feasible. As such, this RIS does not provide a full assessment of these alternatives.

Regulation by amendment to other legislation, such as the *Environment Protection Act 1970* or the *Occupational Health and Safety Act 2004*, would necessitate a period of legislative review and assessment over several years, during which time the risks at issue would remain unregulated. The process of legislative amendment has already been undertaken for the *Port Services Act 1995*. The amendment to other legislation would, therefore, represent a duplication of effort. There are two additional factors indicating that this course of action would not be appropriate:

- WorkSafe Victoria has indicated that it is reluctant to have its powers extended to cover port risks, believing those risks are better managed by the relevant specialist port agencies.
- Powers under the *Environment Protection Act 1970* would not be easily amended to address the issues considered by this RIS. Currently, pollution abatement notices issued under EPA legislation are issued to the occupier of the land (in this instance, the PoMC) not the polluter, and Policies made under the *Environmental Protection Act 1970* give the EPA only limited powers to regulate day to day activities at the port.

4.1.5.2 Other jurisdictions

Developing regulations similar to that of other jurisdictions (i.e. regulation of bunkering at night) was not considered a feasible option because the problem identified was that the PoMC Guidelines do not have legislative backing rather than that the Guidelines themselves are inappropriate.

5 Assessment of the impacts

In order to assess any regulatory proposal, a careful examination of its impact must be undertaken. The following chapter provides a multi-criteria and cost-benefit analysis of the options considered. In accordance with the requirements of the DTF, this RIS considers the incremental costs and benefits of moving from the base case: that the transfer of non-cargo liquids continues to be managed by legally unenforceable guidelines.²⁰

5.1 Data limitations

As noted throughout the previous chapters, there are a number of data limitations that impact on the rigour of the impact assessment. The data limitations include:

- limited data on rates of compliance or which groups of port users are not complying with the current Guidelines
- no data on the impact of regulatory reforms in the ports sector since the mid-1990s
- no data is available on the impact of specific regulations in other jurisdictions
- no evidence of a link between compliance with the PoMC's Guidelines and the occurrence of incidents
- no data on the number of incidents caused by non-compliance with the PoMC Guidelines
- limited data on the impact of incidents on other port users.

Due to these data limitations, a cost-benefit analysis has not been possible. These data limitations have affected the robustness of the cost-benefit analysis and, therefore, the conclusions that can be drawn from the analysis.

Multi-criteria analysis (MCA), in combination with a break-even approach, has been used to assess the impacts in this RIS. The *Victorian Guide to Regulation* states that “multi-criteria analysis is useful where it is not possible to quantify and assign monetary values to all the impacts of an option”. A breakeven approach has also been applied to the preferred option to allow for a judgement to be made about the likelihood of those benefits actually being achieved.²¹

5.2 Multi criteria analysis

We will utilise MCA to assess the options. This is an analytical framework that allows a set of qualitatively different options to be compared using common criteria. Box 5.1 below provides an outline of what a MCA should comprise.

²⁰ Government of Victoria, 2007, *Victorian Guide to Regulation*, Department of Treasury and Finance, Melbourne.

²¹ Ibid.

Box 5.1: Multi-criteria analysis (MCA)

MCA refers to a range of techniques to assess policy options against decision criteria. MCA enables options to be compared in a way that utilises quantitative and qualitative evidence fully. The approach enables the inclusion of a wider range of criteria — including social and environmental considerations for example — than used in a typical financial analysis. In addition, the approach is transparent - necessarily subjective judgements and assumptions are made to determine options and criteria and to assign scores, and weights are made explicitly. The preferences of the decision maker reflected in these judgements and assumptions can be readily changed in a sensitivity analysis or to incorporate more robust indicators of community preferences.

The UK Prime Minister's Strategy Unit notes that MCA may include the following steps:

- identify options for analysis
- identify criteria against which options will be assessed
- assess options against criteria using quantitative or qualitative data
- score options against criteria on a consistent basis
- weight criteria and compare options
- carry out sensitivity analysis and revisit conclusions.

Source: Prime Minister's Strategy Unit, UK Cabinet Office 2004, Strategy Survival Guide: Appraising Options, Multi-criteria analysis in practice, http://interactive.cabinetoffice.gov.uk/strategy/survivalguide/skills/ao_multi.htm

Three categories of assessment criteria were used (Table 5.1). These categories reflect an interpretation of effectiveness (how well the outputs of a service achieve the policy objectives) and efficiency (how well governments use their resources to produce units of services or undertake the relevant task) for providing the effective management of non-cargo liquid transfers and bunkering. To the extent possible, we will minimise overlap between criteria, but some degree of overlap is unavoidable.

We have incorporated weightings into our analysis. Determining relative weightings to reflect the relative importance of each criterion is a difficult stage. Weights are subjective and reflect the values of those assigning them.

An emphasis has been placed on the benefit derived by stakeholders under each of the options. The primary objectives of the proposal are to reduce the incidence and risk of spills, delays in port operations and environmental damage related to the transfer of non-cargo liquids and bunker fuel. Given the importance of these objectives, we have assigned a relatively high weighting of 40 per cent to this criterion. The other two criteria have been weighted equally at 30 per cent, reflecting their equal importance in the effectiveness and efficiency of the scheme.

Table 5.1 Evaluation criteria

Criteria	Weighting	Description	Elements
Benefit to stakeholders	40%	Assess the effectiveness of an option in terms of how well the option is likely to reduce the impact of poor management practices related to the transfer of non-cargo liquids and bunkering on the PoMC, PoM stakeholders, environment and local community.	<ul style="list-style-type: none"> • Likelihood of safer management during the transfer of non-cargo liquids and bunkering • Certainty around compliance requirements for PoMC and port users
Cost	30%	Assess the costs of an option for both government and industry	<ul style="list-style-type: none"> • Transition costs • On-going costs • Timeframe for implementation

Enforceability	30%	Assess the potential for outcomes from an option to be monitored and enforceable.	<ul style="list-style-type: none"> Ability to assess compliance Ability to ensure compliance
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The evaluation criteria will be used to assess each option against an eleven point scale (from -5 to 5) resulting in a quantitative rating that demonstrates the level of variation from the base case. The scale differs for each assessment category, as demonstrated in Table 5.2. Although such an analysis unavoidably involves some judgement, these judgements are transparent.

Table 5.2: Multi-criteria analysis scale

Criteria	Rating	
	-5	5
Benefits to stakeholders	The option significantly decreases safe management of non-cargo liquid transfers and bunkering	The option significantly increases safe management of non-cargo liquid transfers and bunkering
Cost	The option involves high costs for industry and/or the regulator	The option involves low costs for industry and/or the regulator.
Enforceability	The option does not include a clear framework for monitoring and enforcing compliance	The option includes a clear framework for monitoring and enforcing compliance

5.2.1 Option 1 – Proposed regulations

Benefit to stakeholders

The proposed regulations will deliver benefits by encouraging behavioural change among operators as a result of the introduction of legislative sanctions for non-compliance with safety and environmental standards.

These regulations will legally require port operators to proactively manage the risks associated with the transfer of non-cargo liquids and bunkering. Improved adherence to the Guidelines is expected to reduce the number of incidences associated with these substances and, therefore, reduce the impact of delays on port operators and enable the PoMC to more fully acquit its own obligations with respect to environmental management and health and safety.

Improved compliance with authorisation and notification processes will increase the PoMC's capacity to monitor bunkering and liquid transfer activity. This will enable the PoMC observers to attend more of these activities to ensure compliance with Guideline standards.

The proposed regulations also provide clarity to the PoMC and port users about how to ensure compliance with the Act with respect to the management of hazardous port activities and abandoned property.

Given this assessment, the proposed regulations have been given a score of 3 against the benefit to stakeholders criterion.

Cost

The proposed regulations will generate additional costs for the PoMC and industry. The magnitude of these costs is anticipated to be small.

The PoMC is likely to incur additional costs during the transitional phase, as it is anticipated that it will undertake an education campaign to alert current port users to the change in regulatory

arrangements. The PoMC is also likely to incur ongoing costs monitoring compliance and undertaking enforcement activities. However, the marginal cost of such activity is expected to be negligible, as the PoMC already conducts monitoring and enforcement activity with regard to compliance with its Guidelines. The PoMC has reported during consultation that the proposed regulations will not have an impact on resourcing requirements as the PoMC already undertakes all of these activities for all port users under the voluntary guidelines. As such, there will be no change in the scope of its monitoring and compliance burden.

Industry will only incur additional costs if they are not currently complying with the PoMC Guidelines to notify the PoMC of their intention to undertake bunkering or the transfer of non-cargo bulk liquids, or they are not meeting safety and environmental standards set out in the Guidelines and are compelled under the regulations to cease operation until the issue has been addressed.

Stakeholders that are currently complying with the Guidelines voluntarily or as a contractual requirement of leasing land from PoMC advised during consultation that the administrative burden with complying with the Guidelines was minimal (taking 20 minutes per notification or to prepare the initial paper work for an authority), could be conducted by email and did not interfere with their normal operations within the PoM.

Stakeholders noted that the requirement to provide notification 24 hours prior to undertaking a bunkering or liquid transfer activity did not affect their operational activities and that they had not experienced delays from having to notify or obtain authorisation from the PoMC. Refer to Appendix B for further details of stakeholder consultations that were undertaken while preparing this RIS.

Given this assessment, the proposed regulations have been given a score of -2 against the cost criterion, as they will introduce some additional costs. It is anticipated that between 50 and 150 businesses will incur additional costs and these costs are estimated to be approximately \$64 per year per business for the businesses affected.

This assessment of cost does not include additional compliance costs resulting from requirements to replace equipment that is judged to be unsafe or faulty. It is likely that these costs will be incurred by a minority of operators; however, it has not been possible to estimate them.

Enforceability

The introduction of subordinate legislation provides a clear mandate and framework for monitoring and enforcing compliance. The additional details around the management of hazardous port activities and abandoned property ensures the requirements of the Act are evident to all responsible parties.

Given this assessment, the proposed regulations have been given a score of 4 against the enforceability criterion.

Scoring of Option 1

Based on the assessment above, Option 1 - the proposed regulations - has been given a weighted score of 1.8. Table 5.3 provides a summary of the scoring for Option 1.

Table 5.3: Option 1 – Proposed regulations

Criteria	Weighting	Scoring of option	Weighted score
Benefit to stakeholders	40%	3	1.2
Cost	30%	-2	-0.6
Enforceability	30%	4	1.2
Total	100%	5	1.8

5.2.2 Option 2 – Application of contractual obligations

Benefit to stakeholders

Similar to the introduction of the proposed regulation, the introduction of contractual obligations for all port users will encourage behavioural change among port users and contractually require port operators to proactively manage the risks associated with the transfer of non-cargo liquids and bunkering.

Given this assessment, the application of contractual obligations has been given a score of 3 against the benefit to stakeholders criterion.

Cost

The application of contractual obligations will generate additional costs for the PoMC and industry. The magnitude of these costs is anticipated to be considerable. The PoMC currently uses contracts to impel port users who lease port land or who conduct licensed activities at the port to comply with the PoMC's environmental guidelines and protocols. Under this option, additional contracts would be developed and managed for all other port users. The PoMC estimates this could comprise up to 1000 additional businesses.

The PoMC state that a standard contract for all port users is not feasible due to the nature of their business, (i.e. a lot of port users are only in the port for a very short time, this being 1-2 days). Under this option the PoMC staff would be required to meet with each of these additional businesses and negotiate a contractual agreement with them that specifically requires compliance with the Guidelines. Either or both the PoMC and the business in question would likely require legal advice. This would represent considerable additional costs in time and legal fees for both the businesses and the PoMC.

Given this assessment, the application of contractual obligations has been given a score of -4 against the cost criterion.

Enforceability

Through the introduction of contracts, the PoMC will have recourse to civil remedies for non-compliance; this will increase the PoMC's capacity to monitor and enforce compliance.

Given this assessment, the application of contractual obligations has been given a score of 2 against the enforceability criterion.

Scoring of Option 2

Based on the assessment above, Option 2 - application of contractual arrangements - has been given a weighted score of 0.6. Table 5.6 provides a summary of the scoring for Option 2.

Table 5.4: Option 2 – Application of contractual arrangements

Criteria	Weighting	Scoring of option	Weighted score
Benefit to stakeholders	40%	3	1.2
Cost	30%	-4	-1.2
Enforceability	30%	2	0.6
Total	100%	1	0.6

5.2.3 Option 3 – Education campaign

Benefit to stakeholders

The education campaign is unlikely to deliver very much in the way of benefit through behavioural change among operators as a result of additional educational material promoting the PoMC Guidelines and the benefits of adhering to them. Those organisations that voluntarily respond to instruments like guidelines would already have done so in order to manage physical and reputational risk.

Given this assessment, the education campaign has been given a score of 1 against the benefit to stakeholders criterion. This is a conservative judgement because, as noted previously, some change might occur.

Cost

An education campaign will generate additional costs for the PoMC, however, the magnitude of these costs is anticipated to be small. The PoMC will be required to develop, maintain and promote education material in a range of languages. Given the long periods between visits to the PoM for some vessels and the change in staff, it would be necessary for this campaign to be ongoing. However, the campaign will not need to be extensive or particularly expensive, as there would already be a base level of understanding on compliance with safe operations by most port users.

Given this assessment, the education campaign has been given a score of -1 against the cost criterion.

Enforceability

The education campaign will not provide any additional enforceability to the current regulatory and management regime.

Given this assessment, the education campaign has been given a score of 0 against the enforceability criterion.

Scoring of Option 3

Based on the assessment above, Option 3 — education campaign has been given a weighted score of 0.1. Table 5.6.5 provides a summary of the scoring for Option 3.

Table 5.5: Option 3 – Education campaign

Criteria	Weighting	Scoring of option	Weighted score
Benefit to stakeholders	40%	1	0.4
Cost	30%	-1	-0.3
Enforceability	30%	0	0
Total	100%	0	0.1

5.2.4 Summary assessment of options considered

The summary assessment table, comparing the performance of the options against the assessment categories, is provided below (Table 5.6).

Table 5.6 Summary assessment of options considered

Criteria	Proposed regulations	Application of contractual obligations	Educational campaign
Benefit to stakeholders	1.2	1.2	0.4
Cost	-0.6	-1.2	-0.3
Enforceability	1.2	0.6	0
Total	1.8	0.6	0.1

5.3 Breakeven analysis of the proposed regulations

A *prima-facie* assessment using a multi-criteria analysis suggests that the proposed regulations are the preferred option. This analysis is based, in part, on the assumption that the proposed regulations will encourage a measurable level of behavioural change that will, in turn, result in fewer incidences associated with the transfer of non-cargo liquids and bunkering. It is important, therefore, to assess if the level of behaviour change required to ensure that the regulations are not a net cost seems reasonable and achievable.

A break-even analysis is attractive in this situation because it does not seek to predict the level of behavioural change but tests the reasonableness of a minimum level of behavioural change, compared with costs. If this quantum of behavioural change exceeds the minimum required to at least cover costs, the option provides a net benefit to the community.

This section will provide an estimate of the costs of introducing the proposed regulations and the level of behavioural change required to ensure that the regulations do not represent a net cost.

5.3.1 Costs

The proposed regulation imposes costs on business through compliance requirements. These costs are considered over a ten year time period (2011 to 2020). Costs of the proposed regulation are assessed against the base case – that is, the costs estimated (in Net Present Value (NPV) terms with a 3.5 per cent discount rate applied) are those incurred over and above the base case.

The proposed regulations are not expected to have an impact on the PoMC's resourcing requirements, as implementation and enforcement activities are already undertaken to monitor adherence to the PoMCs Guidelines and contractual arrangements and to respond to incidents.

Costs to business

The costs to business will all be incurred by the proportion of port users that are not currently voluntarily complying with the PoMC Guidelines. For this population of port users, the introduction of the proposed regulations will result in a one-off education cost and a small ongoing administrative burden. For the purposes of this assessment, it has been assumed that between five and 15 per cent of the estimated 1,000 businesses that currently operate in the PoM over the course of a year and that do not have contractual arrangements with the PoMC currently do not comply with the voluntary guidelines. As noted previously, approximately 1,000 businesses would operate within the PoM

within a given year that do not have a contractual agreement with the PoMC. It has therefore been assumed that between 50 and 150 businesses are currently not complying with the regulations.

These assumptions are based on the PoMC's best estimates; however, as indicated earlier, a complete data set does not exist. The assumed level of compliance reflects the range of other motivating factors that would lead the majority of businesses to comply without explicit regulation. These motivating factors include incentives to comply with purely administrative requirements such as notification. If businesses do not notify the PoMC of bunkering and liquid transfers, then PoMC is unable to monitor the business's activity. The PoMC observers attend the majority of bunkering and liquid transfer activities where notification has been provided. Failure to comply with this process could lead to implications that the business wished to avoid the PoMC's scrutiny.

Education

Those port operators that have not been complying with the Guidelines will need to educate some of their staff to ensure that they are now adhering with the regulations. Given that the operational requirements will not be entirely new, training and familiarisation will not be as extensive as would be the case for an entirely new procedure. Assuming that two employees per business would require training and familiarisation for four hours using an average figure of \$33²² per hour per staff member and an on-cost and overhead multiplication factor of 1.75,²³ the cost to a business for training and familiarisation would be around \$462 in the first year. The low cost of training has been assumed because businesses who frequently work within ports would already have a base level awareness of safe operating procedure. The total cost to business of education following the introduction of the proposed regulations would be between \$22,300 and \$67,000. Incremental ongoing training costs for new staff are likely to be minimal.

Administration

Those port operators that have not been complying with the Guidelines will also need to undertake additional administration to ensure they have the relevant authority and notify the PoMC prior to bunkering and the transfer of non-cargo liquids. Those businesses that are already voluntarily complying with the Guidelines are not expected to have any additional costs. Stakeholders advised during consultation that both the application for authority and the notification process takes 20 minutes. Assuming that each additional affected business undertakes four activities per year (one application for authorisation and three or four notifications) that will be captured by the proposed regulations, using an average figure of \$33 per hour per staff member and an on-cost multiplication factor of 1.75, the cost to a business for administration would be \$77 per year. The total additional cost to business of administration over a ten year period would be between \$32,000 and \$96,100.

The regulations provide detail on the type of information to be provided during the authorisation and notification stages for hazardous port activities that is required in the Act. The Act defines hazardous port activities as:

- the transfer of dry or liquid cargoes to and from vessels or wharves
- hot works, being welding, thermal or oxygen cutting or heating or any other heat producing or spark producing activity.

For completeness, the cost of fulfilling the authorisation and notification requirements for hazardous port activities for the PoM users been provided in Box 5.2 below. These costs are attributable to the legislation rather than the proposed regulations, as this is where the requirement to undertake authorisation and notification for hazardous port activities resides (see Appendix A for more detail on the Act).

²² Based on full time adult total earnings in Victoria (ABS Cat No. 6302.0 - Average Weekly Earnings, Australia, Nov 2009) and assuming a 37.5 hour working week.

²³ Victorian Competition and Efficiency Commission 2007, *Suggested default methodology and values for staff time in BIA/RIS analysis*, Melbourne

Box 5.2: Other administrative costs

The assumptions used to estimate the costs to apply for authorisation and provide notification before undertaking hazardous port activities are similar to those used to estimate the cost of authorisation and notification.

- An estimated 85-95 per cent of port users that do not have a contractual obligation and 100 per cent of port users with a contractual obligation with PoMC voluntarily comply with the guidelines i.e. between 50 and 100 port users do not comply.
- Both the application for authorisation and notification take 20 minutes.
- An average figure of \$33 per hour per staff member and an on-cost multiplication factor of 1.75

Given that hazardous port activities covers a larger suite of activities, it has been assumed that on average each additional business will undertake ten activities (a combination of both applications for authorisation and notifications) a year.

The cost to business would be \$192.50 per year. The total additional cost to business of administration over a ten year period would be between \$80,000 and \$240,100.

Total quantifiable costs

The total quantifiable cost of the proposed regulations between 2011 and 2020 is estimated to be between \$54,300 and \$163,100. Additional compliance costs are likely to be generated from requirements to replace unsafe or faulty equipment. These costs have not been quantified.

Box 5.3: Sensitivity analysis

Data that could have helped to estimate current compliance rates for parties that are not contractually obligated to comply with the guidelines—such as the number of notifications currently made these parties, or the numbers of non-compliant parties that are discovered through inspections as a proportion of all inspections—are not available. Therefore, for completeness, a further cost sensitivity has been calculated. For this calculation, a 65 per cent voluntary compliance rate with the guidelines for parties operating in the PoM that are not contractually obligated to comply with the guidelines has been assumed.

If the current compliance rate were 65 per cent, the total quantifiable cost of the proposed regulations is estimated to be \$380,300 over the ten year period (using a 3.5 per cent discount rate). As indicated above, the PoMC reports the likely compliance rate is between 85 and 95 per cent, and as such, we consider a 65 per cent compliance rate to be unlikely.

5.3.2 Breakeven analysis

Direct quantifiable benefit will arise from the introduction of the proposed regulations if it results in behavioural change by port operators that reduces the number of incidents involving bunkering and the transfer of non-cargo liquids (assuming there is a relationship between compliance with the PoMC Guidelines and the number of incidents within the PoM). This benefit can be measured as the reduction in the number of hours of ship delays in the PoM - as this represents the major quantifiable externality resulting from incidents within the PoM that may have been caused by non-compliance with the PoMC Guidelines.

Shipping lines advised during consultation that any lost time at port needs to be made up as the vessel operate on tight time frames. They also reported that increased fuel consumption as a result of having to make up lost time represented the major cost of delays at port. Stakeholders estimated that a one hour delay requires on average a ship to consume an extra 6.25 tonnes of bunker fuel at a cost of approximately \$600 per tonne. The analysis finds that if the number of hours of ship delays in the PoM is reduced by between 1.7 and 5.2 per year, the direct benefit will balance the cost of the proposed regulations.

There is no data on the average length of delay that results from an incident caused by non-compliance with the PoMC Guidelines. The length of delay can vary considerably, depending on:

- the location of the incident within the Port
- product type
- size of spill
- local weather/wind/swell conditions.

The PoMC reports that any bunker fuel incident (no matter how small) that requires an oil spill response will result in a minimum four hour localised delay. For a spill of 450T (such as the one described in Box 2.1) the delay, while still localised, can be in the order of eight to ten hours.

The results of the breakeven analysis indicate that the benefits will outweigh the costs if the number of incidents occurring as a result of non-compliance are reduced by between one and two incidents per year (this is equivalent to a reduction in the number of incidents where a ship is delayed by four hours of between four and 13 times over ten years).

Results of the break-even analysis illustrate the moderate cost of the proposed regulations. The analysis may overstate the level of direct benefit required as it does not include a valuation of the following benefits associated with the proposed standard:

- Reduced emission of greenhouse gases.
- Reduced pollution of the local marine environment.
- Reduced risk of a major incident that causes the closure of part or all of the port.
- Increased clarity around the administration of hazardous port activities and abandoned goods.

These benefits have not been costed because they are difficult or impossible to quantify in monetary terms and analysis of such benefit can be subject to considerable subjectivity. It should be noted, however, that the costs are also likely to be understated because not all of the costs have been quantified.

It is important to note in this analysis that the break-even target is not:

- the expected total benefit of the scheme, or
- the target benefit for government to be satisfied that the scheme is a ‘success’.

What the break-even does is set a threshold specifically for the cost-benefit analysis to test the reasonableness of the costs imposed against potential direct benefits.

The estimated level of benefit required for the proposed regulations to breakeven seems achievable. As noted earlier, however, there are significant data limitations inherent in this assessment. As such, this represents a judgement and input will be sought during consultation as to the likely level of behavioural change brought about by the explicit regulation of bunkering and the transfer of non-cargo liquids and the impact that is likely to have on the frequency and severity of incidents within the PoMC.

5.4 Identification of preferred option

The MCA finds that the proposed regulations are the prima-facie preferred option. Further, an assessment of the minimum level of behavioural change required to ensure that the introduction of the regulations is not a net cost to society seems achievable. The proposed regulations are, therefore, the preferred option.

This preferred option gives regulatory backing to the PoMC’s existing guidelines and contractual arrangements. Introducing the proposed regulations would result in new powers and responsibilities for the PoMC with regards to the transfer of non-cargo liquid substances and bunkering. These

regulations will place a number of requirements on shipping lines, bunker service operators and other responsible parties, including the legal requirements to:

- apply for authorisation and notify PoMC prior to transfer non-cargo liquid substances and bunkering
- comply with the PoMC Guidelines relating to the transfer non-cargo liquid substances and bunkering
- cease operations related to the transfer of non-cargo liquid substances and bunkering if the PoMC judges the activity to not comply with PoMC Guidelines until such time as action has been taken to rectify the non-compliance issue.

As documented above, adopting the preferred option is expected to result in the following impacts on stakeholders:

- Minor implementation costs for the PoMC as it is anticipated that it will undertake an education campaign to alert current port users to the change in regulatory arrangements.
- Very small marginal impact on the PoMC's resourcing requirements, as enforcement activities are already undertaken to monitor adherence to PoMCs Guidelines and contractual arrangements and to respond to incidents.
- No impact on businesses that are already complying with the voluntary guidelines.
- An additional administrative burden for those port users (estimated to be between 5 and 15 per cent of port users without contract) that are currently not complying with the voluntary guidelines.

Table 5.7 provides a summary of each of the elements that the regulated parties will have to undertake to comply with the proposed regulations.

Table 5.7: Requirements for regulated parties under the preferred option

PoMC	PoM users
Issue an authority to carry out a hazardous activity, bunkering or the transfer of liquids unless the PoMC is of the opinion it would create significant risk to any person, property or the environment or interfere with the operation of the port.	Apply for and receive an authorisation to undertake a hazardous activity, bunkering or the transfer of non-cargo liquids at least 24 hours prior to the activity.
Suspend, vary or cancel an authority to carry out a hazardous activity, bunkering or the transfer of non-cargo liquids if it reasonably believes that continuing the authority would create significant risk to any person, property or the environment or interfere with the operation of the port.	Person to produce authority for inspection on request
Before suspension, variation or cancellation of authority, the PoMC must issue a written notice stating the reason and rationale for the suspension, variation or cancellation and inviting the holder of the authority to respond.	Provide notice of proposal to carry out a hazardous port activity, bunkering and liquid transfers or transfers of cargo involving dangerous goods at least 24 hours before that activity is to occur.
Recover costs incurred from clean up action resulting from any incident arising out of a hazardous port activity, bunkering or liquid transfer from: <ul style="list-style-type: none"> the person managing the activity the owner, master or agent of the vessel on which the incident has occurred or been permitted to occur the occupier of any premises or vessel upon which the incident has occurred or been permitted to occur. 	Immediately notify the PoMC of any incident involving a hazardous port activity or bunkering and liquid transfers.
Notify the rightful owner of abandoned property.	
Keep a register of abandoned property.	

6 Implementation & evaluation strategy

6.1 Implementation and enforcement issues

It is intended that the proposed regulations will come into effect in October 2010. The implementation of the proposed regulations will provide legislative backing to the PoMC's Guidelines. As discussed previously, bunkering activities are currently controlled by Harbour Master Directions through the Operations Handbook, the Bunker Transfer Guidelines published by the PoMC and, in some instances, through contractual requirements. Hence, no significant implementation issues are anticipated for either the PoMC or the affected businesses. The majority of businesses have already been voluntarily complying with the PoMC's Guidelines.

The PoMC will communicate the new regulations through the Whole of Port Health, Safety and Environment Committee, the Coode Island User Group and the Port Security Committee. The PoMC also intends to conduct an education campaign to alert port users to the change in the regulatory framework and to emphasise the legislative backing of the PoMC's Guidelines.

The PoMC will continue to administer and enforce the preferred option through its Health and Safety staff. Application for authorisation and notification to carry out bunkering activity will occur through emailing a request to the PoMC. As discussed previously, notification is in the form of a one page template provided by the PoMC. In practice, 24 hours notice is required, however stakeholders indicated that the PoMC were responsive to urgent requests within 24 hours and the PoMC has indicated that it will continue to be responsive in such situations.

Implementation and enforcement strategies include:

- the development of standard operating procedures with respect to monitoring and enforcing compliance with the proposed regulations, including enhancing current audit arrangements
- development of a Code of Conduct
- training for port safety officers
- development of an internal review mechanism.

The measures needed to change the behaviour of port users include enhancement of current audit arrangements, greater enforcement (including application of sanctions), increased frequency of compliance checks and consultation with affected owners. Table 6.1 summarises the penalties for non-compliance in the proposed regulations.

Table 6.1: Penalties for non-compliance

Offence	Penalty
Conducting a hazardous port activity, bunkering or a liquid transfer without authorisation	20 penalty units
Failing to comply with any conditions specified in the authority	20 penalty units
Failing to produce an authority for inspection if requested to do so	10 penalty units
Conducting a hazardous port activity, bunkering or a liquid transfer without providing notification	20 penalty units
Prepare a manifest prior to transferring dry or liquid cargo that are dangerous goods and provide	20 penalty units

it to the PoMC 24 hours before the activity is to occur.

The proposed amendment is intended to allow the PoMC to collect information about the behaviour of port users. With that information, the PoMC will be better placed to design and implement risk management strategies.

The costs of the implementation and enforcement strategies are difficult to accurately estimate as the majority of these strategies are already part of the PoMC's operations. While the PoMC will incur some costs in developing standard operating procedures and a Code of Conduct, these costs are expected to be less than \$100,000 over five years. The costs are expected to form part of the PoMC's standard operating expenses.

6.2 Evaluation strategy

Consistent with the introduction of the amendments to the Act, the evaluation strategy includes the following elements.

Monitoring and management review are elements within the PoMC's Safety and Environmental Management Plan (SEMP). Those activities and the PoMC's specific compliance monitoring processes are expected to provide ongoing information about the effectiveness of the regulatory initiatives. Baseline data will be collected to judge the effectiveness of the compliance measures will include incident and near miss data. The data will be collected as incidents or near misses occur, or infringement or improvement notices are issued. Once related enforcement powers for port safety officers are granted, the PoMC will be in a position to review and upgrade its compliance monitoring processes as appropriate.

As part of established reporting procedures, the PoMC will report to the Risk Sub-Committee of the PoMC Board on a monthly basis as to the impact of the regulations against key performance indicators. The main key performance indicators are:

- assessment of the behavioural changes in port users as a consequence of the introduction of a regulatory regime (eg compliance with relevant risk management guidelines, interface with port safety officers)
- reduction in hazardous port activity and bunkering and other non-cargo liquid transfer incident rates, and reduction in lost work time
- the numbers of vehicles or vessels abandoned.

This information will form part of the Annual Report and the PoMC's reporting to the Minister for Roads & Ports.

7 Statements of compliance

7.1 Impacts on small business

It is Victorian Government policy to specifically consider the impact of proposed amendments to legislative proposals on small business in a RIS. Where the costs of compliance with regulations comprise a significant proportion of business costs, small businesses²⁴ may be affected disproportionately by such costs compared to large businesses.

The proposed regulations will not have differential impacts on small business relative to large businesses. Compliance costs for small businesses are likely to be minimal based on the small administrative changes that may be required by the proposed regulations. In addition, given the nature of the proposed regulated activity, the number of small businesses that either provide or consume the transfer of non-cargo liquids and bunkering services within the PoM is likely to be minimal.

7.2 Assessment of competition impacts

It is Victorian Government policy that legislation will not restrict competition unless it can be demonstrated that:

- the benefits of the restriction, as a whole, outweigh the costs
- the objectives of the legislation can only be achieved by restricting competition.

In order to demonstrate that the above principles have been met, the *Victorian Guide to Regulation* requires a ‘competition test’ to be undertaken for all new, or proposed amendments to, legislation.

A legislative measure is likely to have an impact on competition if any of the following questions can be answered in the affirmative.

Table 7.1: Impact on competition

Question	Assessment
Is the proposed measure likely to affect the market structure of the affected sector(s) – i.e. will it reduce the number of participants in the market, or increase the size of incumbent firms?	No – the proposed regulations will not affect the market structure as all port users will now be required to comply with the regulations.
Will it be more difficult for new firms or individuals to enter the industry after the imposition of the proposed measure?	No – the proposed regulations make it much clearer and the requirements of the PoMC more explicit for new businesses to comply with.
Will the costs/benefits associated with the proposed measure affect some firms or individuals substantially more than others (e.g. small firms,	Potentially – as discussed above, the impact is expected to be greater on those businesses who are not currently complying with the PoMC’s

²⁴ The Australian Bureau of Statistics (ABS) definition of a small business is one that has less than 20 full-time employees.

Question	Assessment
part-time participants in occupations etc)?	voluntary guidelines.
Will the proposed measure restrict the ability of businesses to choose the price, quality, range or location of their products?	No – under the proposed regulations the authorisation and notification process will operate in the same manner as under the PoMC's Guidelines. Any restrictions on activity for safety reasons will remain.
Will the proposed measure lead to higher ongoing costs for new entrants that existing firms do not have to meet?	No – the regulations are formalising the current requirements for all businesses, both incumbents and new entrants.
Is the ability or incentive to innovate or develop new products or services likely to be affected by the proposed measure?	No – the regulations require authorisation and notification for the purposes of safety within the port. There is no impact on the ability or incentive to innovate.

Given the answers above, the proposed regulations will not restrict competition.

7.3 Administrative Burden Statement

Under the *Reducing the Regulatory Burden* (RRB) initiative, the Victorian Government has made a commitment to cut the existing administrative burden of regulation by 15 per cent over three years and 25 per cent over five years. The RRB initiative encompasses any requirement imposed on businesses and the not-for-profit sector under state legislation.

The administrative burden experienced by industry of the proposed regulation is estimated to be between \$3,200 and \$9,610 per year. The additional costs from compliance and delay is estimated to be marginal. As such, the impact of these costs is less than the threshold required for a Regulatory Cost Model (RCM) measurement to be undertaken.

Appendix A – Comparison of the Act and proposed regulations

Act	Proposed regulation
Power to conduct a cleanup and recover costs	
88J Pollution abatement <ul style="list-style-type: none"> gives the Port of Melbourne Corporation the responsibility of cleaning up where necessary 	Port corporation may recover costs incurred: <ul style="list-style-type: none"> defines who costs can be recovered from
88K Recovery of costs of clean up <ul style="list-style-type: none"> types of costs that can be reasonably recovered requires that the costs be recovered from the person who caused the circumstances that gave rise to the need for the clean up to be conducted allows for costs to be recovered “in any court of competent jurisdiction” 	
88L Relationship with the Environment Protection Act 1970 <ul style="list-style-type: none"> exempts clean up responsibility and cost recovery from any situation in which the cleanup is conducted under that Act 	
Power to control hazardous port activities	
88 M Hazardous port activity notice <ul style="list-style-type: none"> requires person to give notice, defines penalty 	Application for authorisation to undertake hazardous port activity <ul style="list-style-type: none"> requires notice within 24 hours of the activity
88 N Hazardous port activity direction <ul style="list-style-type: none"> defines how the direction can be given defines the type of direction (cease, relocate or leave) 	defines what information needs to be provided by the person giving notice Port corporation may authorise hazardous port activity <ul style="list-style-type: none"> details criteria that allow the port corporation to refuse authority
88O Offence not to comply with hazardous port activity direction <ul style="list-style-type: none"> defines the penalty for non-compliance 	Notification of intention to undertake a hazardous port activity <ul style="list-style-type: none"> requires notice within 24 hours of the activity
	Conditions concerning authority <ul style="list-style-type: none"> details the types of conditions the port corporation may specify, including the requirement for the holder of the authority to comply with standards, procedures, guidelines or protocols developed by the port corporation details who the authority is valid for
	Immediate suspension of authority

Act	Proposed regulation
	<ul style="list-style-type: none"> defines when the port corporation can suspend an authority defines the form of the notification and what information needs to be provided by the port corporation <p>Port corporation may cancel or vary authority:</p> <ul style="list-style-type: none"> defines criteria for cancelling or varying an authority <p>Written notice of cancellation or variation of authority:</p> <ul style="list-style-type: none"> requires the port corporation to give notice before cancelling or varying an authority and allow for and consider any submission by the holder of the authority <p>Person to produce authority for inspection on request</p> <ul style="list-style-type: none"> defines the penalty for not producing the authority <p>Notification to the port corporation of any incident involving a hazardous port activity or transfer to and from vessels of liquids or bulk cargo</p> <ul style="list-style-type: none"> defines the penalty for not notifying the port corporation of an incident involving a hazardous port activity
Power to deal with abandoned property	
88P Offence to leave things in port waters or on port land	Port corporation to notify owner
<ul style="list-style-type: none"> defines the penalty 	<ul style="list-style-type: none"> requires the port corporation to serve the owner in writing of the removal and storage of the property
88Q Removal of things	
<ul style="list-style-type: none"> details criteria for when the PoMC can move something from the port 	<ul style="list-style-type: none"> dictates the information that must be included in the written notice
88R Powers when moving things	Port corporation to keep a register
<ul style="list-style-type: none"> allows use of reasonable force when moving a vehicle or vessel 	<ul style="list-style-type: none"> requires a register of all abandoned or unattended property to be kept
<ul style="list-style-type: none"> dictates conditions of storage 	<ul style="list-style-type: none"> dictates the information that must be recorded in the register
88S Requirement to make enquiries as to owner of thing	
<ul style="list-style-type: none"> requirement to make all reasonable enquires to establish the owner 	
88T Disposal of thing	
<ul style="list-style-type: none"> defines the steps to be undertaken prior to disposal 	
88U Recovery of costs	
<ul style="list-style-type: none"> defines the cost that can be recovered 	
<ul style="list-style-type: none"> allows for costs to be recovered "in any court of competent jurisdiction" 	
<ul style="list-style-type: none"> cost may be recovered out of the proceeds of the disposal 	
88V Payment of compensation	
<ul style="list-style-type: none"> defines compensation as proceeds (if any) of disposal less the cost of disposal 	
88W Proceeds of disposal where owner not located	

Act	Proposed regulation
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- dictates proceeds from the disposal of the thing after recovery of disposal costs must be paid into the consolidated fund
-

Power to make regulation

Regulation making powers for:

- the prohibition or regulation of the transfer to and from vessels of liquids or bulk cargo
- the carrying out on port land or on vessels in port waters or elsewhere in port waters of hazardous port activities
- the moving of abandoned things
- procedures for dealing with things

Application for authorisation to undertake bunkering and the transfer of non-cargo liquids

- requires notice within 24 hours of the activity
- defines what information needs to be provided by the person giving notice

Port corporation may authorise bunkering and the transfer of non-cargo liquids

- details criteria that allow the port corporation to refuse authority

Notification of intention to undertake bunkering and the transfer of non-cargo liquids

- requires notice within 24 hours of the activity

Conditions concerning authority

- details the types of conditions the port corporation may specify, including the requirement for the holder of the authority to comply with standards, procedures, guidelines or protocols developed by the port corporation
- details who the authority is valid for

Immediate suspension of authority

- defines when the port corporation can suspend an authority
- defines the form of the notification and what information needs to be provided by the port corporation

Port corporation may cancel or vary authority:

- defines criteria for cancelling or varying an authority

Written notice of cancellation or variation of authority

- requires the port corporation to give notice before cancelling or varying an authority and allow for and consider any submission by the holder of the authority

Person to produce authority for inspection on request

- defines the penalty for not producing the authority

Notification to the port corporation of any incident involving a hazardous port activity or bunkering and the transfer of non-cargo liquids

- defines the penalty for not notifying the port corporation of an incident involving bunkering and the transfer of non-cargo liquids.

Appendix B – Stakeholder consultation

Consultation strategy – Post-release of the RIS

Once the Victorian Competition and Efficiency Commission has assessed the adequacy of the Regulatory Impact Statement, it will be released for a consultation period of 28 days as required by the *Subordinate Legislation Act 1994*. Since consultation has already taken place with affected stakeholders, 28 days is considered a sufficient period for public comment in response to this RIS.

Consultation strategy – During the development of the RIS

Preliminary consultation has already taken place with the following key stakeholders:

- Port of Melbourne Corporation
- Hamburgsud
- BP Australia
- Mobile Oil
- Terminals Pty Ltd
- Toll Shipping
- DP World
- Marstel Terminals

In order to ensure the stakeholder consultations were effective, the Deloitte team developed a consultation document that was sent to all stakeholders ahead of the consultation. A copy of this consultation document is below.

REGULATORY IMPACT STATEMENT FOR THE PORT SERVICES (PORT OF MELBOURNE SAFETY AND OTHER MATTERS) REGULATIONS 2010

Consultation paper – February 2010

Overview

Deloitte has been engaged by the Department of Transport (DoT) to prepare a Regulatory Impact Statement (RIS) for the proposed Port Services (Port of Melbourne Safety and Other Matters) Regulations 2010. These proposed regulations follow on from the amendments to the Act to allow the Port of Melbourne Corporation (PoMC) to regulate hazards at the port that are not regulated by other legislation, including the transfer of liquids and bulk cargoes, hot work and abandoned property.

Your opportunity to provide input

Deloitte is conducting one-on-one consultations with each of the major stakeholders that are likely to be affected by this proposed change. The purpose of these consultations will be to gather information to assist in determining the impacts of the changes.

To assist your organisation in preparing for this consultation we have developed the following questions. These questions will guide the discussion.

Questions

Is a change to the current management regime needed?

What would be the risks of not introducing regulation to support the amended *Port Services Act*?

How often does your organisation undertake the transfer of liquids (including bunkering), the transfer of bulk dry cargo and hot works?

What are your organisation's current administrative arrangements with the PoMC for managing bunkering, the transfer of bulk liquid or dry cargo and hot works?

What are the costs of the current administrative arrangements?

How would your organisation's administrative arrangements change if proposed regulations were introduced?

What impact would these changes have on the cost of these administrative arrangements?

If new regulation was introduced what would be the costs to your organisation of educating the relevant employees about their new obligations?

Has your organisation been affected by clean up operations as a result of liquid spills or discharges of airborne materials in the Port of Melbourne?

What are the costs to your organisation of suspending port operations?

How will the proposed regulation decrease the incidence or cost associated with liquid spills and discharges of airborne materials, hot works accidents and abandoned property?

Could these behavioural changes be achieved using an alternative approach, such as, an education campaign?

Summary of stakeholder views

The stakeholders interviewed during the development of the RIS all have contractual arrangements with the PoMC. Given the nature of the port operations, it was not possible to engage with other, less frequent users of the port. As a result of their contractual arrangements, established relationship with the PoMC and their own corporate risk management and responsibilities, all the stakeholders interviewed during the development of the RIS stated they currently comply with the PoMC's voluntary guidelines.

Given the purpose of the proposed regulations is to provide legislative backing to the requirements already in place, the consulted stakeholders did not identify any particular problems with the current operation and did not anticipate any impact or expected change in their own behaviour as a result of the proposed regulations.

Current management regime

All stakeholders interviewed during the development of the RIS stated that they currently comply with the PoMC's Guidelines without explicit regulatory backing. Reasons included:

- corporate risk management (part of a global organisation with internal risk management strategies and safety standards)
- the need to have a good working relationship with the PoMC.

While the stakeholders interviewed did not think a change to the current management regime was required to adjust their behaviour, they did recognise there may be potential benefit in the proposed regulations as a result of increased compliance.

Bunkering activity

The number of bunkering activities undertaken per year varied depending on the type of business and its operations. Some businesses contracted out their bunkering activities to other businesses within the PoM. Some businesses require bunkering every week, others every two weeks and some more infrequently.

Stakeholders reported that the notification to undertake bunkering to the PoMC is in the form of a one page template provided by PoMC. Stakeholders advised during consultation that the administrative burden to comply with the Guidelines was minimal (taking no more than 20 minutes in total), and could be conducted by email, and did not interfere with their normal operations within the PoM.

In practice, 24 hours notice is provided by the businesses, however, stakeholders indicated that the PoMC were responsive to urgent requests within 24 hours.

Bunkering operations are subject to port inspections and the vessel's Master is responsible for notifying the Port Bunker Inspector within one hour prior to the start of the bunkering operations. This occurs via telephone.

Stakeholders noted the ongoing need for all parties to be flexible on timing, particularly because priority is given to passenger ships entering and exiting the port, and other operators need to slot in between.

Cost estimates

Stakeholders noted that there will be a small transitional cost associated with reviewing the new regulations, to ensuring that their internal processes are consistent with the new regulations and to educate their staff on any particulars. Given the stakeholders extensive internal risk management plans, they did not anticipate any marginal compliance costs.

Based on the assumption that the PoMC will continue its current authorisation and notification processes, the stakeholders interviewed did not anticipate any change in their administrative arrangements or costs as a result of the proposed regulations.

Stakeholders interviewed could not identify any specific incidents in recent times where they were affected by clean up operations as a result of liquid spills or discharges of airborne materials within the PoM. Stakeholders noted that delays in port operations were resolved through the speed of their ships between their origin and destination. If a delay were to occur, stakeholders estimated that a one hour delay requires on average a ship to consume an extra 6.25 tonnes of bunker fuel at a cost of approximately \$600 per tonne.

Stakeholders interviewed were unaware of specific incidents of non-compliance and were unable to anticipate the impacts of the proposed regulations on the incidence or costs associated with liquid spills and other incidents.

Appendix C – Other PoM regulators

Department of Transport

In relation to Victoria's ports, the key role of DOT is to develop and implement the Government's agenda for the freight and logistics, and port and marine sectors. This includes addressing matters relating to the safety and environmental management of the marine environment. The Victorian Government's strategy for the future of Victoria's ports is outlined in *Port Futures*. DOT is primarily responsible for meeting the Government's commitments under this strategy, as well as its commitments in relation to other policies affecting Victoria's transport system, including the related *Freight Futures* strategy. DOT is also responsible for providing advice to the relevant minister on port policy matters.

Transport Safety Victoria

Transport Safety Victoria (TSV) is Victoria's transport safety agency and is responsible for administering the *Marine Act 1998* and the *Marine Regulations 2009*. The functions relevant to hazardous port activities include:

- investigating marine incidents and accidents and implementing appropriate action on the findings
- enforcing and monitoring compliance with its standards (such as for navigation and maritime safety on state waters)
- developing, reviewing, coordinating and managing the Victorian marine pollution contingency plan.²⁵

TSV also has several relevant powers in relation to safety, environmental protection and security, including:

- to order a vessel be provisionally detained if it appears to be an unsafe vessel²⁶
- to remove and dispose of any obstruction to navigation and to recover any reasonable costs incurred in taking such action from the owner of, or person responsible for, the obstruction.²⁷

However, these powers only cover State waters and not landside or waterside areas.

Harbour Master

The PoMC is required to ensure a licensed Harbour Master is, at all times, engaged for the PoM waters.²⁸ The functions of the Harbour Master are to control and direct:

- (a) vessels entering and leaving the waters
- (b) the navigation and other movement of vessels
- (c) the position where and the manner in which any vessel may anchor or be secured

²⁵ Section 65 of the *Marine Act 1998*.

²⁶ An unsafe vessel is defined as a vessel whose operations is likely to endanger a person (section 98 of the *Marine Act 1998*).

²⁷ An obstruction to navigation is defined as including a vessel, whether wrecked or not, that is a danger to the safe navigation of vessels or is moored, berthed or placed in contravention of the *Marine Act 1998* or the *Marine Regulations 2009* (section 99B of the *Marine Act 1998*).

²⁸ Section 26A of the *Marine Act 1998*.

(d) the time and manner of the taking in or discharging from any vessel of cargo, stores, fuel, fresh water and water ballast

(e) the securing or removal of any vessel in those waters in, from or to any position.²⁹

In carrying out these functions, the Harbour Master must consider the safety of persons, the safe operation of vessels and their effect on the environment.³⁰

The Harbour Master has the power to give written or oral directions to prohibit a vessel from entering or requiring the removal of any vessel from the port waters and it is an offence to fail to comply with such a direction.³¹

The role of the Harbour Master is confined to waterside activities, except in relation to the loading and unloading of cargo. The Harbour Master's role is also focussed on the conduct of vessels, not port users.³² Accordingly, safety, security and environmental issues on the landside of the PoM are outside the scope of the Harbour Master's power.

Environment Protection Authority

The Environment Protection Authority (EPA) also has a role in the PoM, primarily in the protection of the land and water in Victoria and to the territorial seas adjacent to the coasts of Victoria, and also in the administration of the:

- *Environment Protection Act 1970*
- *Pollution of Waters by Oil and Noxious Substances Act 1986*.

Powers provided to the EPA by the *Environment Protection Act 1970* include:

- Control the environmental impacts of activities which create a state of potential danger to the environment by the issue of works approvals, licences, permits and pollution abatement notices.³³
- Undertake investigations and inspections to ensure compliance with this Act.³⁴
- To require information to be provided to it.³⁵
- To enter premises which may discharge any wastes or pollutants.³⁶

These powers are limited in relation to EPA's ability to regulate day-to-day activities at the PoM, especially relating to activities at common user berths. In the event of a pollution incident at a common user berth, the EPA would issue a pollution abatement notice to the PoMC as occupier of the land, instead of the polluter.

Victorian WorkCover Authority

The Victorian WorkCover Authority (WorkSafe) is responsible for occupational health and safety (OH&S), including at the PoM, under the *Occupational Health and Safety Act 2004* (OHS Act). It is also responsible for the handling of dangerous goods under the *Dangerous Goods Act 1985* (Dangerous Goods Act).

The OHS Act imposes duties on employers to ensure their employees have a safe working environment without risks to their health. It also imposes a notification requirement that an employer must notify WorkSafe immediately after becoming aware that a dangerous incident has occurred.³⁷

²⁹ Section 26C of the *Marine Act 1998*.

³⁰ *Ibid*.

³¹ Sections 26E and 26HB of the *Marine Act 1998*.

³² Minter Ellison Lawyers, 2008, draft *Regulatory Impact Statement on Port Services (Port of Melbourne) Regulations*.

³³ Sections 13 and 28B of the *Environment Protection Act 1970*.

³⁴ Section 13 of the *Environment Protection Act 1970*.

³⁵ Section 13 of the *Environment Protection Act 1970*.

³⁶ Section 55 of the *Environment Protection Act 1970*.

WorkSafe may investigate suspected breaches of the OHS Act and can bring proceedings against persons suspected of infringing the Act. Regulations under the Act set out additional requirements relating to hazardous activities and make it an offence to fail to comply with these requirements. For example, an employer must ensure that the risk of a musculoskeletal disorder associated with a hazardous manual handling task affecting an employee is eliminated so far as is reasonably practicable.³⁸ The regulations also require certain hazardous activities to be licensed or registered, such as for the use of a crane, rigging, and scaffolding.³⁹

The Dangerous Goods Act imposes duties on persons who store, transport, use, handle or transfer dangerous goods, including licences and a requirement to notify WorkSafe of the presence of dangerous goods.⁴⁰ WorkSafe has powers to investigate breaches of the Dangerous Goods Act or the regulations under it, including powers to enter and inspect premises where dangerous goods are being stored or used and to require persons to provide documents or answer questions.

WorkSafe also has powers to make guidelines and compliance codes. WorkSafe has jurisdiction on sea as well as on land and can have extraterritorial application if there is a substantial connection with Victoria.⁴¹

Australian Maritime Safety Authority

The Australian Maritime Safety Authority (AMSA) has powers relating to the carriage of dangerous goods and the regulation of ships and their safety under the *Navigation Act 1912*. AMSA may prohibit the carriage of particular cargo or goods and it is an offence to fail to comply with such a prohibition.⁴²

³⁷ Section 38 of the *Occupational Health and Safety Act 2004*. A dangerous incident is described in detail but includes a serious injury or an incident that exposes a person in the immediate vicinity to an immediate risk to the person's health or safety.

³⁸ Section 3.1.2 *Occupational Health and Safety Regulations 2007*.

³⁹ Schedule 3 *Occupational Health and Safety Regulations 2007*.

⁴⁰ Part 5 Division 2 *Dangerous Goods (Storage and Handling Regulations 2000)*.

⁴¹ Minter Ellison Lawyers, 2008, draft *Regulatory Impact Statement on Port Services (Port of Melbourne) Regulations*.

⁴² Section 254, *Navigation Act 1912*.

Appendix D –Transport Integration Act 2010

Consideration of Transport System Objectives of the Transport Integration Act 2010⁴³

Objective	Outcome of evidence of consideration
Safety and health and wellbeing	The proposed regulations primarily support safety and health and wellbeing, by minimising risk of harm to persons through the regulation of hazardous port activities at the PoM.
Economic prosperity	The proposed regulations support economic prosperity by minimising disruption and the potential loss of income to normal port activities through the regulation of hazardous port activities and the management of abandoned and unattended things. In addition, the impact on business is small.
Environmental sustainability	The proposed regulations support environmental sustainability by regulating hazardous port activities, thereby minimising incidents at the PoM and consequential effects on the environment.
Efficiency, coordination and reliability	The proposed regulations support efficiency, coordination and reliability as they will promote an increase in the efficiency of port operations.
Social and economic inclusion	The proposed regulations support social and economic inclusion by minimising barriers to access to allow people to access the port by regulating hazardous port activities.
Integration of transport and land use	This objective is of less relevance for the proposed regulations as the regulations do not impact on integrated transport and land use.

⁴³ The assessment in this Appendix is the work of the Department of Transport and was conducted after the VCEC assessment letter.

Consideration of Decision Making Principles of the Transport Integration Act 2010

Principle	Outcome of evidence of consideration
Principle of integrated decision making	Regard has been given to the principle of integrated decision making through consideration and coordination in the development of the proposed regulations and the RIS.
Principle of triple bottom line assessment	As demonstrated by the considerations set out above, the economic, social and environmental costs and benefits are considered in the cost-benefit analysis section of this RIS.
Principle of equity between persons	This principle is of less relevance to the proposed regulations.
Principle of the transport system user perspective	Regard has been had to the principle of transport system user perspective by enhancing the useability of the PoM through the proposed regulation of hazardous port activities.
Precautionary principle	The RIS and the proposed regulations consider the precautionary principle, by analysing the potential impacts and damage to the environment which could occur without regulation.
Principle of stakeholder engagement and community consultation	Appendix B of the RIS outlines the consultation undertaken to take into account the interests of stakeholders.
Principle of transparency	Demonstrated by the publication of this RIS and the proposed regulations for public comment.

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